I SA / Sz 944/19 - Judgment of the Provincial Administrative Court in Szczecin from 2020-03-31

A case from a complaint about the decision of the Head of the Customs and Tax Office regarding the determination of a flat-rate personal income tax for the payer for unpaid and unpaid in July 2014 and a decision on the liability of the payer for arrears in this tax

Sentence

The Provincial Administrative Court in Szczecin, composed of the following: Chairman Judge of the Provincial Administrative Court Nadzieja Karczmarczyk-Gawęcka, Judges Judge of the Provincial Administrative Court Jolanta Kwiecińska (trial), Judge of the Provincial Administrative Court Ewa Wojtysiak, Senior Court Inspector Edyta Wójtowicz, after recognition in Department I at the hearing on March 12 2020 cases from the complaint of S. Limited Company based in S. on the decision of the Head of the Customs and Tax Office of 27 September 2019 No. [...] regarding the determination of a flat-rate income tax from natural persons not collected and unpaid for July 2014 and the decision on the payer's liability for arrears in this tax annulls the contested decision

Substantiation

The Head of the Customs and Tax Office, by the contested decision of [...], No. [...], after examining the appeal against his own decision of [...], No. [...], supplemented by the decision of [...], No. [...], repealed it in its entirety and specified S. with its registered office in S. (hereinafter: "the Party" or "the Applicant"), as the payer, the flat-rate income tax from natural persons not collected and unpaid for July 2014 in the amount of PLN [...] and ruled that the payer was liable for the uncollected and unpaid flat-rate personal income tax for 2014 in the amount of [...] PLN.

The above decisions were issued in the following facts.

The reasoning of the decision and the case file shows that a Party was subject to a customs and tax audit of the Party from [...] to [...] regarding the correct implementation of the obligations of the flat-rate payer of personal income tax on payments made in 2014, indicated in art. 30a of the Act of 26 July 1991 on personal income tax (Journal of Laws 2012.361, as amended; hereinafter: "updof"). The inspection was completed by delivering the inspection result to the Party. Then on

[...] the first instance authority issued a decision transforming the completed customs and fiscal control into tax proceedings.

The authority of the first instance determined that the Party was established in [...] and on

[...] entered in the Register of Entrepreneurs of the National Court Register under the number [...] Partners of the Party were: BK (hereinafter: "BK") - since its establishment and JK (hereinafter: "JK", which on

[...] took up newly created shares in the share capital of the Party. Functions in the Management Board were held by: JK (president of the board), BK (vice president of the board) as well as MZC and PO (board members). The right to self-representation was vested in the president and vice president of the management board. The subject of the Party's activities is making details from various materials using the method of machining, gas cutting, plasma cutting and anti-corrosive coatings. Website's revenue in years

2010 - 2017 was respectively: [...] PLN, [...] PLN, [...] PLN, [...] PLN, [...] PLN, [...] PLN, [. ..] PLN, [...] PLN. Over the years 2010 - 2017, the website carried out [...]% of sales to entities registered outside Poland, including contractors from the EU, from [...]% in 2017 to [...]% in 2011

The authority also analyzed the financial results of the Website for the years 2011-2017 (data from the financial statements contained in the InfoCredit database supplemented with manually entered data from 2014 due to the lack of data from this year in the above-mentioned database).

Based on the above data, the first instance authority determined that in 2011-2017 the Website generated the following profits in thous. PLN: [...] PLN in 2011, [...] PLN in 2012, [...] PLN in 2013, [...] PLN in 2014, [...]] PLN in 2015, PLN [...] in 2016 and PLN [...] in 2017. The authority also determined that the profits for 2011-2013 were excluded from the distribution until [...] r. (resolution of the General Meeting of the Parties on the distribution of profit) and were transferred to the supplementary and reserve capital of the Party.

In addition, based on, among others data from the Slovak register of commercial companies and explanations of JK, it was established that on [...] it was established by three entities, ie JK, BK and E. sro with its registered office in B. sro, a limited partnership under the business name S. -S. ks with its registered office in B. (hereinafter: "Slovak company"). JK and JB became the general partners of this company and the limited partner ES sro based in B.

It was also established, among others on the basis of data received from the Cypriot tax administration and explanations of JK that the abovementioned Slovak company on

[...] founded another company, i.e. S. Ltd. with its registered office in N. (hereinafter: "the Cypriot company"). The Slovak company held 100% shares in the company's share capital. The managing director of the Cypriot company is BL, EC and JK

In the period covered by the tax proceedings (2014) there were changes in the scope of the above companies.

And so in the first place the composition of the partners of the Party and the Cypriot company changed. This was due to the fact that JK on [...] and BK on [...] took up the newly created shares in the increased share capital of the Cypriot company, covering them with a contribution in kind in the form of all shares held in the share capital of the Parties . As a result of the above transactions, JK and BK lost the status of partners of the Party, becoming at the same time partners of the Cypriot company. The party, in turn, became a subsidiary of its sole shareholder, i.e. a Cypriot company, which holds in its capital [...] shares with a total nominal value of PLN [...]. The persons authorized to represent the Party were: JK (president of the board), BK (vice president of the board) and MZC, PO and IK (members of the board).

After making the abovementioned the transaction saw further changes in the structure of the above companies. The authorities showed that JK and BK sold the shares they took up in the Cypriot company as a result of the abovementioned transactions. As the authorities determined, in [...] and [...] those shares became the property of the Slovak company as a result of their contribution to this company by JK and BK as an in-kind contribution. Same

JK and JB lost their status as partners of a Cypriot company while increasing the value of the contributions made to the Slovak company of which they are general partners.

After making the above changes in the composition and / or capital of the Party, the Cypriot and Slovak companies, the Ordinary General Meetings of the Parties by Resolution No. [...] of [...] June 2014 allocated the net profit of the Party for 2013.

in the amount of PLN [...] and undistributed profits from previous years accumulated on the capital of the Party, i.e. a reserve of PLN [...] and a reserve of PLN [...] to be paid as a dividend to the sole shareholder, i.e. a Cypriot company. On the basis of the above resolutions The party paid to the Cypriot company a dividend total of PLN [...] in three installments: 1st installment in the amount of PLN [...] on July [...] 2014; Second installment in the amount of [...] PLN on [...] and third installment in the amount of [...] PLN on [...]

Then the Cypriot company paid dividends to its only partner, i.e. a Slovak company, in the same installments and on the same days, via a bank account in Poland.

Then, on the same day, the Slovak company paid dividend to its general partners, i.e. BK and JK in the amount of PLN [...] and [...] respectively.

The party showed a dividend paid to a Cypriot company in the amount of PLN [...] in information [...] for 2014 filed with Z. Tax Office in S. as tax-exempt income.

Therefore, she did not submit an annual income tax declaration on the PIT-8AR form for taxation of dividends paid in 2014.

to BK and JK (who remained partners of the Party before making the changes described above in the composition and / or capital of the Party, the Cypriot company and the Slovak company). Thus, the party did not collect and pay any flat-rate income tax from the abovementioned title on the account of the tax office competent according to its registered office.

However, BK and JK showed the abovementioned dividend received from a Slovak company in statements on the amount of income (incurred loss) in the tax year 2014 (PIT-36) and attached information on the amount of income from abroad and taxes paid in the tax year (PIT / ZG) indicating that the tax due for their receipt amounted to PLN [...].

Based on the source material, the first instance authority determined that the actual beneficiaries of the dividend paid were the long-term partners of the Party, i.e.

and JK The authority decided that the dividend was paid to the abovementioned persons through controlled foreign entities, i.e. a Cypriot company and a Slovak company. In addition, the dividend amount paid in 2014 in the amount of PLN [...] made to the Cypriot company was recognized by the Party as tax-exempt pursuant to art. 22 paragraph 4 updof taking into account art. 22a updof In connection with the above, the Party did not submit an annual declaration of flat-rate income tax on the PIT-8AR form for taxation of dividends paid in 2014 to BK and JK (then partners of the Party), and did not collect or pay a flat-rate income tax from the above title on the account of the tax office competent according to its registered office.

According to the authority, the arrangements made in the course of customs and fiscal control as well as tax proceedings regarding the activities of the Parties are in conflict with the principles arising from international agreements in the field of tax avoidance, which provide tax benefits only for real beneficiaries of passive income, such as dividends. In the case, the transaction mechanism was carried out in such a way that the funds from the dividend of a Polish company transferred by

foreign companies controlled by BK and JK registered in Cyprus and Slovakia, ultimately go to the abovementioned persons with a tax residence on the territory of Poland. As dividends paid from the Party were paid, the abovementioned

By decision of [...] August 2018, the authority included in the files of customs and fiscal control, printouts of responses obtained from the Cypriot tax administration regarding requests for exchange of information in the field of administrative cooperation in the field of taxation.

As indicated by the authority, the content of the Cyprus tax administration's reply and the documents relating to the Cypriot company attached to it (bank statements for 2014, financial statements for 2014, statements of accounts for 2014) shows that the Cypriot company has declared dividend income for the year ended [...] in the amount of

[...] euros. However, no tax was confirmed on the dividend confirmation. As further indicated by the authority, the Cypriot company was operating in 2014 and the turnover included dividend income (EUR [...]), investment income on market financial instruments (EUR [...]) and interest income ([...] euros). At the same time, the Cypriot company did not employ employees other than directors. From the entries of the financial statements it was determined that: assets of the Cypriot company as at

[...] covered current receivables of EUR [...]

(including from a subsidiary, i.e. Parties in the amount of EUR [...] and other receivables in the amount of EUR [...]); funds on the bank account and in hand in the amount of EUR [...]; fixed assets in the amount of EUR [...] ([...]); the liabilities of the Cypriot company as at [...] date included current liabilities in the amount of EUR [...] (including liabilities to the subsidiary, i.e. the Slovak company in EUR; accumulated losses of EUR [...].

In turn, an excerpt from the Cypriot company's accounts for 2014 showed that: entries on balance sheet accounts covering receivables of a Cypriot company exclusively from Polish entities, i.e.: the Party, the bank and the brokerage house; on the liabilities side, among others entries on balance sheet accounts covering the obligations of the Cypriot company towards various Polish entities, as well as the liabilities towards the subsidiary Slovak company.

The authority also determined that only the payment of the abovementioned dividends (by a Polish company in the amount of [...] PLN).

As the authority emphasized, the entries of an extract from the books of account and bank statements for 2014 indicated that the Cypriot company transferred the dividend amount to a

Slovak company in the same amount in which it received it from a subsidiary (i.e. the Party). In connection with this the amount of the Cypriot company has shown both in terms of revenues and costs. As a result, the Cypriot company showed a loss of EUR [...] in the 2014 financial statements. In terms of tax residence, it was established that the Cypriot company made a statement that in 2014 it did not benefit from [...] exemption from income tax on all its income, regardless of the source of its achievement.

In the course of the proceedings, the Party submitted a letter of [...] in which it referred to the findings presented by the tax authority as a result of the audit of [...]. The party indicated holding activities in Cyprus and Slovakia in the context of applying the "beneficial owner" principle; the need to consider individual interpretations in the settlement of taxation of income from a Slovak company in connection with art. 14k and art. 14m of the Act of 29 August 1997 Tax Code (Journal of Laws 2019.900, as amended; hereinafter: "Op"): individual interpretation of [...], No. [...] issued on JK's request and individual interpretation of

[...], ITPB [...] issued at the request of BK; no legal basis to challenge the taxable effects of important and effective transactions; breach by the tax authority of the rule of conducting tax proceedings by failing to collect full evidence and breach of the principle of assessing evidence and conducting proceedings in a way that violates trust in tax authorities.

The party repeated the above allegations, also in the content of the letter of 28 March 2019, constituting a statement on the case of evidence gathered in the case.

By decision of [...] No. as above supplemented by Decision of [...] No. the authority of the first instance determined as a payer the amount of flat-rate income tax from natural persons not collected and unpaid for 2014.

in the amount of PLN [...] and ruled on the payer's liability for uncollected and unpaid flat-rate personal income tax for 2014.

in the amount of [...] PLN.

In the content of the justification of the decision, the authority referred to art. 199a § 1 of the Act of August 29, 1997 Tax Code (Journal of Laws 2018.800, as amended; hereinafter: "Op") and in this respect stated that entities registered in Cyprus and Slovakia were only intermediaries, for which indicates the speed of transfer to subsequent entities in the chain, without economic and economic justification. The authority indicated that the content of the testimony given by BK supports this conclusion

and JK. They show that they did not have only basic knowledge about the Cypriot and Slovak companies. In addition, the funds paid by the Party in the form of dividends did not serve to the development of activities of foreign companies declared during the hearings, but were ultimately intended for BK and JK

Based on the above, the authority concluded that the decision on the obligation to tax the dividend paid by a Party should be based on the provisions of the agreement between the Government of the Republic of Poland and the Government of the Republic of Cyprus on the avoidance of double taxation in the field of income and property taxes, done in Warsaw on June 4, 1992. (OJ 1993.523.117, as amended; hereinafter: the "UPO Agreement"), including in particular Art. 10 UPO contracts.

In this respect, the tax authority also referred to the Commentary to the OECD Model Convention and views presented in other sources. In addition, he cited the provisions of art. 91 section 1 of the Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws 1997, 473.78, as amended; hereinafter: the "Constitution of the Republic of Poland") and Art. 31 section 1 of the Vienna Convention on the Law of Treaties of May 23, 1969 (OJ 1990.439.74; hereinafter: "the Convention").

The authority, under the provisions of the UPO agreement, extensively referred to the concept of "beneficial owner of income" - "beneficial owner" and considered that in the case it could not be considered that the funds received by BK and JK were in fact transferred to Cypriot and Slovak companies for the needs of these entities.

Therefore, it could not be considered that the dividend paid was actually linked to their activities. This is not indicated by the mere fact of transferring funds via bank accounts kept for these companies. The authority emphasized that, contrary to the views of the Party, it was not deprived of a legal basis to resolve the proceedings in the manner described as a result of the inspection.

From art. 91 of the Polish Constitution results from the primacy of ratified tax agreements over domestic law, so the provisions of international agreements may be directly applicable on the territory of the Republic of Poland. He stated that the real beneficiary clause was in force during the period covered by the proceeding in question. Therefore, the authority was entitled to settle tax proceedings based on the provisions arising from art. 10 paragraph 2 UPO contracts.

The authority referred to the abovementioned individual interpretations and pointed out that they did not take into account significant elements of the facts affecting the issued decision. Thus, he considered that there were no grounds to accept that the interpretations issued had warranty functions in the case under consideration.

According to the authority, the overall evidence gathered led to different conclusions than those presented by the Party. The body did not believe the testimonies of BK and JK witnesses regarding the motives for creating a holding group as allegedly associated with the desire to internationalize the business. After the capital and personal transformations, decisions regarding the conduct of key operational activities still belonged to BK and JK, but were made through a chain of dependencies in which foreign entities operate. In practice, the decision chain has been extended.

Finally referring to the updof regulations (Article 3 (1), Article 17 (1) (4), Article 30a (1) (4), Article 41 (1) and Article 42 (1a)) in relation to the facts of the case, the tax authority assumed that the Party was obliged as a payer to exercise due diligence in determining the actual beneficiary and determining the appropriate tax base and tax due. It was obvious to the authority that BK and JK controlling the Party (Polish company), the Cypriot company and the Slovak company, personally took actions resulting in the payment of dividends from the Polish company, which was eventually transferred to their personal bank accounts. According to the authority, the Party incorrectly applied art. 22 paragraph 4 updop and exempted dividend from taxation. The dividend paid by the Party should be taxed at a rate of 19% in accordance with art. 30a paragraph 1 point 4 of the updof as the payment of dividends from the participation in profits of legal persons received by natural persons.

On [...] the authority issued a decision, which supplemented the abovementioned decision, by indicating that it specifies to the Party as the payer the amount of flat-rate personal income tax not collected and not paid for July 2014.

in the amount of PLN [...] and rules on the liability of the payer for unpaid and unpaid flat-rate personal income tax for July 2014.

in the amount of [...] PLN. The authority explained that in the content of the operative part of the decision of

[...] imprecisely indicated the period for which the amount of tax due by the payer is due.

The party appealed against the above decision by appealing for its annulment and discontinuation of the proceedings in the case, or for referring the case for reconsideration. The contested decision, the Party alleged a violation of substantive law and proceedings, i.e. art. 10 paragraph 2 UPO, art. 30a updof, art. 22 paragraph 4 updop, art. 199a § 1 Op and art. 14m § 1 and § 2 in connection from art. 14k § 1 in connection from art. 121 § 1 Op, art. 122 in connection from art. 187 § 1 Op and art. 191 Op in from art. 94 of the Act on the National Tax Administration (uKAS) and Art. 121 Op. from art. 94 of the Act

In support of the substantive law allegations, the Party indicated that the authority's findings conflict with both the provisions of the contract and the Party's actual intentions. She confirmed that in 2014 capital changes took place in a group belonging to natural persons, but they were not aimed at achieving tax benefits. Therefore, there are no grounds for applying the "beneficial owner" clause to the Website. According to the Party, the actual recipient of the dividend paid by the Party was a Cypriot company, which, like the Slovak company, was founded with the intention of conducting distribution activities on foreign markets, i.e. Cyprus and Slovakia and other markets through foreign companies. The page indicated that if the goal was to obtain tax benefits, the establishment of foreign companies would take place at a different date and not a year before dividend payment. In addition, the companies were maintained for that time, what is more, they still exist and no steps have been taken to liquidate them.

According to the Party, the tax authority unlawfully considered that foreign companies are not the actual recipients of dividends, while they were not merely of a purely formal nature, as they were conducting business. In the examined period, they were at the initial stage of activity, in which it is difficult to obtain significant and visible economic activity. Their activities focused on checking the available market using business contacts developed by natural persons. In addition, the Cypriot company conducted financial activities, invested its financial resources mainly in financial instruments, which, according to the Party, confirms the list of examples of transactions from individual years. The site explained that attempts to find new customers did not bring the expected results, so natural persons decided to continue the operations of foreign companies and focus on the functions of holding companies assigned to them, waiting for the opportunity to develop distribution activities. The site emphasizes that the business substance of the companies was sufficient to carry out business activities.

Subsequently, the Party indicated that in the event of questioning the correctness of the settlement under the UPO, the authority had no grounds to automatically assign the dividend payment to natural persons and to apply directly updof

If the provisions of the UPO contract are not applicable, the tax authority should examine the provisions of national law applicable to the examined facts. He should examine whether the Party has the right to apply the dividend exemption it is entitled to directly from the updop. 22 paragraph 4 updop, while the tax authority did not make a proper analysis in this respect.

The party also questioned the adoption of art. 199a Op as a basis to challenge the tax consequences of important and effective transactions involving capital changes. In the view of the Party, the authority did not carry out a comprehensive analysis of this provision and the possibility of its application in the present case. The authority basically conducts its arguments as if a general clause against tax evasion was in force in the Polish legal order during the period under investigation. The party accused the tax authority that formally the basis for action is art. 30a updof and art. 199a Op, and in fact the findings are based on the assumption that the action of the Party was artificial and without economic reasons, aimed at avoiding taxation and contrary to the object and purpose of the Tax Act. The site emphasized that the mere fact that BK and JK have not paid personal income tax cannot constitute a premise that the tax consequences of the transactions in question have been circumvented. All tax settlements in this respect were in accordance with applicable law. In the legal order in force in 2014, there were no provisions authorizing the authority to perform such an assessment. It is currently the subject of a general tax avoidance clause (so-called GAAR), but in 2014 this type of legislation did not apply. In addition, the Party indicated that if there were a provision in the audited period that would allow for interpreting a norm that would allow to challenge the effects of an act, there would be no justification for the introduction in 2016 of a norm authorizing tax authorities to bypass the tax effects of the act. In support of the theses set out in the appeal, the Party presented the position of the latest doctrine and the Ministry of Finance (MF) regarding the application of art. 199a Op

The party also justified the allegation that the tax authority did not take into account the protection resulting from individual interpretations received by BK and JK. She stated that the future events presented in the applications for individual interpretations were identical to the facts of the case. Therefore, the Party acted in confidence in the position of the Ministry of Finance and should not bear negative consequences.

In the justification of the allegations concerning the provisions of the procedure, the Party stated that the tax authority conducted the said procedure and the preceding audit in an incorrect manner in the scope of collecting evidence and its analysis. The party submitted that the tax authority relied mainly on evidence included in the case file from proceedings against JK without interest in the position of the Party. Therefore, the principle of the parties' participation in the proceedings was violated.

The evidence of the case, in the opinion of the Party, does not allow to accept that the conclusions of the tax authority are correct and logical and do not allow to assume that the actual recipient of the dividend paid by the Party was not a Cypriot company. The tax authority considered that the actual beneficiaries of the dividend were natural persons and that foreign companies did not conduct business activities. According to the Party, this conclusion is inconsistent with the facts as foreign companies were holding companies. The tax authority omitted both the testimonies of witnesses in this respect and the arguments presented in the Party's letter of [...] (i.e. in response to the result of the inspection). The party submitted that the evidence had been arbitrarily assessed by the tax authority, since only this evidence was highlighted,

The Party further alleged that the tax authority had stated that the use of the services of a tax consultancy office implied somehow the willingness of the Party to unlawfully limit its tax obligations.

The party further argued that the body, when examining capital links between STR group companies, focused on links between Cypriot and Slovak companies. He considered that their establishment had only a tax purpose and omitted a German company operating in Germany. He also overlooked that the Cypriot company is self-employed of a financial nature.

The appeal includes the list of investment activities carried out by the Cypriot company for April, June and July 2015, for April, June and July 2016 and for February, April and May 2017.

By decision of [...] no. above. the tax authority overturned its own decision issued in the first instance in its entirety and determined as a payer of the flat-rate personal income tax the amount of uncollected and unpaid for July 2014 in the amount of PLN [...] and ruled that the payer was liable for uncollected and unpaid flat-rate personal income tax for 2014, in the amount of [...] PLN.

Justifying such a decision, the appeal body indicated that the essence of the dispute in the case was to determine who was the actual beneficiary of the dividend paid, the Cypriot company, or BK and JK, which eventually received the dividend. The authority agreed with the Party that from

a formal point of view it met all the conditions entitling to the exemption under Article 22 paragraph 4 points 1-4 updop, namely: the dividend payer was a company having its registered office in the territory of the Republic of Poland; obtaining income (income) from dividends was a Cypriot company subject to income tax on all its income in an EU country (according to the residence certificate); the Cypriot company owns 100%, i.e. over 10%, of the capital of the company paying the dividend; Cypriot company in 2014 did not benefit from the exemption from income tax on all its income regardless of the source of its achievement (according to the statement of [...]) However, according to the tax authority, the Party omitted the fact that from art. 22a updop indicates the obligation to apply the provisions of art. 20-22 updop, including agreements on the avoidance of double taxation to which the Republic of Poland is a party. Thus, the tax authority considered that the issue of taxation of dividend income paid to a Cypriot company had to be considered taking into account the UPO. the obligation to apply the provisions of art. 20-22 updop, including agreements on the avoidance of double taxation to which the Republic of Poland is a party. Thus, the tax authority considered that the issue of taxation of income paid as dividends to a Cypriot company should have been considered taking into account the UPO. the obligation to apply the provisions of art. 20-22 updop, including agreements on the avoidance of double taxation to which the Republic of Poland is a party. Thus, the tax authority considered that the issue of taxation of dividend income paid to a Cypriot company had to be considered taking into account the UPO.

In art. 10 UPO, however, contain regulations regarding taxation of dividends. However, as indicated by the tax authority, this contract does not contain the definition of an entitled person (the so-called beneficial owner). Whereas in art. 3 clause 1 of the UPO agreement, there is only the definition of "person". The tax authority also referred to art. 3 clause 2 of the UPO and stated that in 2014 there was no legal definition of "real owner" in Polish tax law, it was only introduced by the Act amending the updof of September 5, 2016 and became effective from January 1, 2017.

Having regard to the above, the tax authority considered that the explanation of the term "person entitled to dividends" should have been made on the basis of the interpretation of double taxation conventions. He explained the role of the OECD Model Convention and Commentary to the OECD Model Convention in creating contracts. He stressed that they are not a source of law within the meaning of Art. 87 of the Polish Constitution, but they play an important role in the interpretation of double taxation treaties. In this regard, he referred to the decisions of

administrative courts. On this basis, he concluded that since the UPO agreement is such a mapping of the provisions of the OECD Model Convention, the position of commentators on the concept of "person entitled to dividends" should be taken into account. The tax authority indicated that the "beneficial owner" clause it was first introduced to the OECD Model Convention in 1977 in order to limit the scope of treaty protection against multi-stage brokerage structures, often used for the payment of passive (passive) income, as a result of which protection was often used by entities residing in third countries, i.e. being parties to a given double taxation agreement or entities from the so-called tax havens. The tax authority, sharing the view expressed in the Commentary to the OECD Model Convention, stated that the notion of "real owner" is not used in a narrow and technical sense in the sense that it is given to it by the fiduciary state of many customary law states, but must be understood in its context, namely in connection with the words "paid [.. because the right of such recipient to use and dispose of the dividend is limited as a result of the contractual or statutory obligation to transfer the obtained payment to another person. This obligation usually results from relevant legal documents, but it may also exist on the basis of facts and circumstances which indicate that, in principle, the recipient clearly has no right to use and dispose of the dividend, without being limited by contractual or statutory obligation to transfer the resulting payment to another person. If the dividend recipient has the actual right to use and dispose of it without contractual or statutory obligations to pass it on to another person, then he is the "actual owner".

The tax authority repeated the arguments contained in the first-instance decision, emphasizing that the Cypriot and Slovak companies were not created for economic purposes, i.e. to internationalize the Party's business activities by establishing branches distributing the products manufactured by it. The establishment of these companies did not contribute to the establishment by the Party of cooperation with new contractors, because the Party continues to sell products directly to its customers. According to the authority, foreign companies were also not holding companies. In this regard, the authority thoroughly explained the operating principles of such companies and referred them to the facts of the case.

The tax authority pointed out that each of the foreign entities is controlled by the same persons, i.e. BK and JK. Repeatingly, the conclusion of the first instance authority stated that the changes in the capital structure resulting in the creation of GS resulted only in the extension of decision levels.

As regards the guarantee function of individual interpretations issued, the authority stated that the facts presented by BK and JK in the applications were narrower and thus different from the circumstances disclosed in the case.

The established facts show that these persons have omitted the information that the Cypriot company will own 100% of the shares in a Polish capital company (limited liability company) and will receive income in the form of dividends paid. They also omitted the fact that, being partners of a Polish limited liability company, they would transfer all their shares to a Cypriot company (by taking up newly created shares in a Cypriot company and covering them with an in-kind contribution in the form of shares held in a Polish company), as a result of which the Cypriot company will become the sole partner of the Polish company z o. o. According to the tax authority, the interpretative authority was not able to respond to the abovementioned issues. As the authority further indicated, unless at the stage of submitting the application for interpretation it is reasonable to require the taxpayer to anticipate future events,

The tax authority pointed out that in the first-instance decision, the Party specified as a payer a flat-rate personal income tax not collected and not paid in the wrong amount, taking as the tax base the entire amount of the dividend paid to the Cypriot company

(i.e. PLN [...]). Meanwhile, evidence shows that BK received PLN [...] and JK received PLN [...], which gives a total of PLN [...]. P. the amount was paid to the limited partner of a Slovak company (i.e. a capital company in which the above persons do not hold shares). Thus, the tax base is the sum of the amounts paid to the general partners of a Slovak company.

The tax authority responded to the allegation of making findings in a case based on evidence included in the case file from proceedings conducted against JK while marginalizing the principle of the parties' participation in evidence proceedings. He emphasized that the documents included in the evidence related to the proceedings against the Party and not JK, as stated in the appeal. In addition, the use of evidence obtained in this way in itself did not violate the principle of the active participation of the Party in tax proceedings or other provisions of Op, because the Party had the right to read the evidence and the opportunity to comment on them, which also occurred in the case. According to the tax authority, he did not deserve the recognition that the evidence was incomplete.

The tax authority extensively referred to the allegation of violation of Art. 199a § 1 Op First agreed with the Party that this provision does not play the role of a general clause against tax

avoidance, as indicated by judgments of administrative courts and the position of the Ministry of Finance. However, he stated that the tax authorities under the provision of Art. 199a § 1 Op are entitled to examine the content of civil law transactions in accordance with the principles of tax law and to challenge these activities from a public law point of view. At the same time, he stated that this does not mean that the tax authorities have the power to decide on the invalidity of civil law transactions, but due to the autonomy of tax law, they may not take into account the effects of civil law transactions that have been made, e.g. to circumvent tax law, for tax purposes. Therefore, the provision of art. 199a § 1 Op may constitute an independent basis for assessing transactions / legal events involving a taxpayer. Therefore, he considered that the content of civil law actions performed by the Party was correctly examined in the decision of the authority of the first instance. In addition, he cited: the Supreme Administrative Court judgment of October 18, 2006,

II FSK 1299/05; judgment of the Constitutional Tribunal of 14 June 2006,

K 53/05 and the judgment of the Provincial Administrative Court in Szczecin of April 4, 2018, I SA / Sz 130/18.

The tax authority emphasized that not only the provision of the abovementioned Art. 199a § 1 Op, but above all the provisions of art. 10 paragraph 2 of the UPO agreement and on this basis it showed that the actual beneficiary of the dividend paid by the Party was not the Cypriot company, but JK and BK.

To sum up, the authority stated that the case involved the unauthorized use of a double taxation agreement in connection with conducting transactions aimed at exercising the treaty privileges resulting from agreements concluded between the source country and the country of residence by the intermediary. In the present case, the main purpose of the transactions carried out by the Party was to obtain benefits exposing the state budget to depletion, as the dividend paid to the abovementioned persons without the mediation of the abovementioned companies are subject to tax pursuant to art. 30a paragraph 1 point 4 updof Therefore, in the present case, the benefits of double taxation avoidance agreements that allow dividends to be exempted from taxation will not apply, but the tax regulations in force in Poland will apply,

In the opinion of the tax authority, the tax authority did not deserve to be taken into account if the examination of the grounds for the dividend exemption under Art. 22 paragraph 4 updop, because this provision applies, as indicated by the authority of the first instance, taking into account agreements on the avoidance of double taxation to which the Republic of Poland is a party. Since

pursuant to art. 10 of the UPO agreement, it was considered that the real beneficiary is not a Cypriot company, but natural persons residing in the Republic of Poland, this provision has not been applied.

According to the tax authority, the first instance decision was issued in accordance with the provisions of Op, thus there was no violation of the tax procedure rules.

The party appealed to the abovementioned the abovementioned decision a complaint filed with the local court, requesting the annulment of the contested decision and the preceding decision of the authority of the first instance and discontinuance of the proceedings in the case, or annulment of the decision and referral of the case for re-examination and ordering the costs of proceedings according to prescribed standards.

The contested decision, the party alleged a violation of:

1) violation of substantive law, i.e.

- art. 10 paragraph 2 (a) of the UPO contract, by refusing the right to apply a 0% tax rate on dividend payment as a consequence of the authority's recognition that the applicant had paid dividend without the "beneficial owner" principle;

- art. 22 paragraph 4 updop, by refusing the right to apply the exemption indicated in this article;

- art. 199a § 1 Op by challenging the effects of important and effective legal actions, while there are no grounds to consider that this provision constitutes an independent premise for disregarding the tax effects of transactions;

- art. 14m § 1 item 1 and 2 in connection from art. 14k § 1 in connection from art. 121 § 1 Op

in connection from art. 94 section 2 ukas, by omitting in the present case individual interpretations issued at the request of BK and JK, on the basis of which the applicant made her tax settlements.

2) violation of the provisions of procedural law, which could have had a significant impact on the outcome of the case, i.e.

- art. 233 § 1 item 1 and 2 of the Op, by issuing a decision upholding the decision of the authority of the first instance, in the face of the conditions for its repeal and discontinuation of proceedings in the case, in particular in connection with the violation of substantive and procedural law (discussed in detail in the complaint and raised in the appeal);

- art. 122 in connection from art. 187 § 1 Op in connection with from art. 94 uKAS, by violating the principle of objective truth by declaring that the case has collected full evidence, examining the case on the basis of incomplete evidence and the lack of complete consideration of the evidence gathered in the case, thus the body formulates theses contrary to the circumstances of the case, in particular in the context of the activities of STR Group companies and the activities undertaken by BK and JK;

- art. 122 in connection from art. 187 § 1 and art. 191 Op in from art. 94 uKAS, by making arrangements in contradiction with the evidence gathered, omitting relevant evidence, conducting the proceedings under a pre-established thesis and, as a consequence, formulating conclusions contrary to the circumstances of the case by the authority;

- art. 121 Op in conjunction from art. 94 uKAS, by exceeding the principle of conducting proceedings in a way that raises trust in fiscal control authorities in connection with the abovementioned deficiencies.

In support of the pleas in law, the applicant relied on arguments to support them.

In response to the complaint, the appeal body requested that it be dismissed, maintaining its previous position in the case.

By letter of [...] (sent on [...]) in the form of an annex to the minutes, the applicant fully maintained her position expressed in the complaint and at the hearing. She also pointed out that even if it were considered that the Cypriot company did not meet the criterion for recognizing it as the real owner (although such an application is not correct and is not confirmed by the evidence gathered), the applicant should have the right to apply the exemption pursuant to art. 22 paragraph 4 points 1-4 updop The applicant emphasized that the updop, both in the legal status in force in 2014 and in the current legal status, does not require the possession of the status of actual owner, such a requirement is mentioned only in art. 21 paragraph 3 item 4 updop, which concerns royalties and interest which are not the subject of dispute in the present case.

The Provincial Administrative Court in Szczecin was weighed as follows:

The complaint proved to be well founded, although not all of her allegations were correct.

The essence of the dispute in the case under consideration boils down to assessing whether the dividend paid by the applicant in 2014 to her sole partner, i.e. S. Ltd. with its registered office in N. in the total amount of PLN [...] is subject to tax pursuant to art. 30a paragraph 1 point 4 updof The answer to the above results in either the correctness or irregularity of the position of the tax

authorities, which considered that the applicant - as a payer of flat-rate personal income tax in relation to the above dividend amount - was obliged to collect from this amount and pay the abovementioned flat-rate tax for 2014.

Stanowisko organów sprowadza się w istocie do uznania, że spółka cypryjska, na rzecz której dokonano wypłaty ww. kwoty dywidendy nie była jej rzeczywistym beneficjentem. Jak bowiem uznały organy, rzeczywistym beneficjentem ww. kwoty dywidendy były osoby fizyczne, tj. J. K. i B. K.. Stąd konieczność zastosowania art. 30a ust. 1 pkt 4 u.p.d.o.f. i opodatkowania powyższej kwoty zryczałtowanym podatkiem dochodowym od dywidendy, czego Skarżąca jako płatnik powyższego podatku nie uczyniła.

While pointing out the legal basis for the decision, the authorities cited in the justification of the decision the regulation of art. 199a Op. dividend. The authorities also considered that from a formal point of view the applicant had met all the conditions entitling her to benefit from the exemption under Article 22 paragraph 4 points 1-4 updop However, according to the authorities of art. 22a updop indicates the obligation to apply the provisions of art. 20-22 updop, including agreements on the avoidance of double taxation to which the Republic of Poland is a party. Thus, the authorities considered that the decision on the obligation to tax the dividend paid by the applicant, and therefore the redefinition or omission of legal acts in relation to the payment indicated by the applicant should have been based essentially on the regulations of the abovementioned Agreement between the Government of the Republic of Poland and the Government of the Republic of Cyprus on the avoidance of double taxation in the field of taxes on income and property, done in Warsaw on 4 June 1992, in particular in art. 10 UPO contracts.

Pointing to the above legal basis, the redefinition or omission of legal actions regarding the payment of the abovementioned the amount of dividend the tax authority therefore appealed in principle to the abovementioned the UPO agreement and the Commentary to the OECD Model Convention cited in its aspect, and views presented in other sources, art. 91 section 1 of the Constitution of the Republic of Poland of April 2, 1997 and Art. 31 section 1 of the Vienna Convention on the Law of Treaties of May 23, 1969. regulations did not allow to recognize the Cypriot company as the real beneficiary of the abovementioned dividend amounts, because according to these regulations, the actual beneficiaries were JK and BK, which resulted in the need to apply updof provisions, i.e. art. 3 clause 1, art. 17 clause 1 point 4, art. 30a paragraph 1 point 4, art. 41 section 1 and art. 42 section 1a) of this Act.

At the same time, the authorities refused the guarantee function of the individual interpretations cited by the applicant, i.e. the individual interpretation of [...] issued on the application of JK and the individual interpretation of [...], No. [...] issued at the request of BK, resulting from art. 14k and art. 14m Op. The authorities indicated that the facts of the case being considered were different from the facts against which the abovementioned cases were issued. interpretations.

In the applicant's view, the abovementioned the dividend amount is not taxable pursuant to art. 10 paragraph 2 of the UPO agreement, because its actual beneficiary is a Cypriot company, and not as recognized by the above-mentioned authorities physical people. The applicant also states that, even if it was considered that the Cypriot company was not the actual beneficiary of the abovementioned the amount of dividend applies in the case is art. 22 paragraph 4 points 1-4 updop, not the abovementioned updof provisions As the applicant recognizes, firstly, in the case under consideration - concerning 2014 - the legal basis for redefining or omitting legal acts in relation to those indicated by the applicant in the payment of the abovementioned dividends and omissions of tax consequences important in legal transactions. Secondly, the authorities are trying to obtain, pursuant to art. 30a updof and art. 199a Op, a tax effect similar to the application of the general tax avoidance clause (so-called GAAR), by doing so without the existence of a legal basis and without the applicant's procedural guarantees. There are no arrangements in this respect regarding the proof and finding by the authority of a number of aspects that are incompatible with the case under consideration in terms of redefining or omitting legal acts in relation to the payment indicated by the Applicant. dividend amounts. There are no arrangements in this respect regarding the proof and finding by the authority of a number of aspects that are incompatible with the case under consideration in terms of redefining or omitting legal acts in relation to the payment indicated by the Applicant. dividend amounts. There are no arrangements in this respect regarding the proof and finding by the authority of a number of aspects that are incompatible with the case under consideration in terms of redefining or omitting legal acts in relation to the payment indicated by the Applicant. dividend amounts.

The applicant also relies on the protection resulting from the abovementioned individual tax law interpretations issued for the benefit of JK and BK. In addition, in the applicant's opinion, the authorities violated a number of procedural provisions, including the fact that they did not gather

full evidence, made any assessment of the evidence gathered, made findings that were not based on evidence, thus conducting the proceedings in a manner that violated trust to tax authorities.

Given the above nature of the dispute, the Court first points out that in fact the tax authorities applied the updof provisions in the case under consideration, i.e. art. 3 clause 1, art. 17 clause 1 point 4, art. 30a paragraph 1 point 4, art. 41 section 1 and art. 42 section 1a) of this Act, recognizing - as the basic legal basis for their application, i.e. redefinition or omission of legal acts in relation to those indicated by the applicant in the scope of payment of the abovementioned dividends, provisions of the UPP agreement and regulations in this respect, including Commentary on the OECD Model Convention and views presented in other sources, art. 91 section 1 of the Constitution of the Republic of Poland of April 2, 1997 and Art. 31 section 1 of the Vienna Convention on the Law of Treaties of May 23, 1969. The court notes that the appeal body admitted that the provision of Art. 199a § 1 Op may constitute the basis for assessing transactions / legal events with the taxpayer's participation, however, he emphasized that the first-instance decision referred primarily to the provisions of Art. 10 paragraph 2 of the UPO Agreement and on this basis it was basically demonstrated that the actual beneficiary of the dividend paid by the Party was not a Cypriot company, and JKi BK This action was considered by the appeal body to be lawful. So it's art. 10 paragraph 2 above in fact, the contract constituted, in the case under consideration, a redefined legal basis or omission by the authorities of legal actions in relation to those indicated by the applicant as regards the payment of the abovementioned dividend amounts. 2 of the UPO Agreement and on this basis it was basically demonstrated that the actual beneficiary of the dividend paid by the Party was not a Cypriot company, and JKi BK This action was considered by the appeal body to be lawful. So it's art. 10 paragraph 2 above in fact, the contract constituted, in the case under consideration, a redefined legal basis or omission by the authorities of legal actions in relation to those indicated by the applicant as regards the payment of the abovementioned dividend amounts. 2 of the UPO Agreement and on this basis it was basically demonstrated that the actual beneficiary of the dividend paid by the Party was not a Cypriot company, and JKi BK This action was considered by the appeal body to be lawful. So it's art. 10 paragraph 2 above in fact, the contract constituted, in the case under consideration, a redefined legal basis or omission by the authorities of legal actions in relation to those indicated by the applicant as regards the payment of the abovementioned dividend amounts.

In the opinion of the Court, this cannot be accepted.

The court notes that pursuant to art. 3 clause 2 updop - taxpayers, if they do not have a registered office or management board in Poland, are subject to tax only on income that they generate on Polish territory. According to art. 26 abovementioned laws, legal persons and organizational units without legal personality and natural persons who are entrepreneurs, who make payments under the titles listed in art. 21 and in art. 22, are as payers, as a rule, collect flat-rate income tax on these payments. Due to dividend income obtained in Poland by taxpayers without a registered office or management in Poland, the tax is set at 19% of this income. In accordance with art. 22 paragraph 4 point 1- updop is possible with the exemption from the abovementioned obligation after meeting certain conditions,

- the applicant paying the dividend is the applicant, i.e. a company having its registered office in the territory of the Republic of Poland (point 1);

- the recipient of income (income) from dividends is a Cypriot company which is subject in the European Union Member State, i.e. in Cyprus, to income tax on all its income (point 2), which results from the certificate in the case file (p. 130 of the authority's file First instance);

- the Cypriot company owns 100%, or more than 10%, of the applicant's shareholder in the dividend payout (point 3);

the Cypriot company in 2014 did not benefit from the exemption from income tax on all its income regardless of the source of its achievement (point 4), which results from the company's statement of 23.06.2015.

(p. 120 files of the first instance authority).

The provisions of art. 20-22 shall apply subject to the provisions of agreements on the avoidance of double taxation to which Poland is a party (Article 22a para. 1 item 1 and para. 2 updop).

However, according to art. 10 paragraph 2 above the Polish-Cypriot agreement on the avoidance of double taxation of dividends may also be taxed in the Contracting State in which the company paying the dividends is established and in accordance with the law of that State. However, if the person entitled to dividends is resident or has its registered office in the other Contracting State, the tax thus determined may not exceed 0% or 5% depending on who the entitled person is. At the same time, art. 10 paragraph 3 above The UPO agreement defines that the term "dividends" used in this article means income from shares or other property rights related

to profit sharing and not relating to claims on claims, as well as income from other shares in the company that are treated in this the same way as income from shares,

The court also indicates that the OECD Model Convention is a model of agreements on the avoidance of double taxation concluded by Poland. Both the Convention and the wording of the Commentary have been developed by consensus by all OECD member countries, which have committed themselves to apply the provisions contained therein. The Model Convention, as well as the Commentary to it, are not a source of universally binding law, but they provide a guide on how to interpret the provisions of agreements on the avoidance of double taxation.

First of all, it should be noted that pursuant to art. 3 lit. c of the Model Convention Poland has undertaken to cooperate closely and, where necessary, to take coordinated action. According to art. 5 lit. b of the OECD Convention may make recommendations to members to achieve its objectives. Therefore, the Commentary to the OECD Model Convention, which is the result of joint work and arrangements of all member states, should be treated by Poland as an interpretative guide in order to ensure uniform interpretation of regulations within all OECD member states.

<u>The term "person entitled to dividend", appearing in the OECD under the name "beneficial owner", is variously translated, both in individual agreements on the avoidance of double taxation and in the literature - as "person entitled to dividend", "real recipient" or just "owner"</u>. However, the content of this concept has not been defined in the OECD or the Polish-Cypriot Agreement on the avoidance of double taxation, while there are some differences in the literature on the interpretation of this concept in the context of double taxation treaties.

Substantially indicates the authority, with reference to the OECD Commentary and Art. 31 abovementioned of the Vienna Convention that the term "authorized person" should not be used in a narrow and technical sense, but should be understood in the light of the subject matter and purpose of the Convention, namely to avoid double taxation, to prevent tax evasion and to prevent tax fraud. Therefore, the interpretation of the concept of dividend owner in light among others The OECD commentary indicates that it is a person whose right to dispose of a payment is not only of a formal nature.

In the Court's opinion, the interpretation of tax law provisions provided by the authority in the context of the provisions of the Polish-Cypriot Agreement on the avoidance of double taxation is consistent with the purpose of the OECD Model Convention.

In the circumstances, therefore, when a payment is made to an entity resident in a particular country, which then transfers that payment to the final recipient, the country in which the payment is made is not obliged to this "intermediary" to apply the provisions of the double taxation agreement. In the opinion of the Court, this would be contrary to the object and purpose of the Convention if the state granted, in the above situation, a reduction or exemption from tax. The Court fully accepts the abovementioned concepts adopted in the case before the authorities. He reasonably pointed out in this respect to the tax authority that, according to the OECD Tax Affairs Committee, it is obvious that the privilege of exemption in the source country will be available only to the entity, who is resident in the other Contracting State and is the true recipient of income. Despite the above, the Tax Affairs Committee decided to add to Art. 10, 11 and 12 KM-OECD the concept of the beneficiary of income, i.e. the entity actually entitled to obtain income. The rationale for introducing this concept was depriving the courts of the possibility of interpreting international agreements in a narrow, legalistic way, which would lead to recognition as the recipient of the entity's income in a legal and not economic sense. Basically also in the abovementioned the authority indicated that in art. 31 of the Vienna Convention on the Law of Treaties, the Commission stated that agreements to avoid double taxation must be interpreted in the usual sense. According to the Commission, the beneficiary is a person who receives some benefit, etc.

Consequently, a company which transfers dividends received to another company and which is not actually able to dispose of them cannot be considered a beneficiary. Therefore, according to the commonly accepted meaning of the term, the beneficiary is a person who actually receives the dividend and can dispose of it on its own. The definition of the beneficiary coincides with the concept of beneficial owner, i.e. the actual recipient, i.e. a person who draws profits from a given source of income and is not a conduct company located between the company that pays the given benefit and the company that ultimately eats it He receives.

Considering the above, in the Court's opinion, for the application of the provisions of the above-mentioned case in the case under consideration UPO agreements, - as the authorities did, making them the basic basis for the application of the abovementioned updof regulations and taxation dividend amounts pursuant to art. 30 a paragraph 1 point 4) of this Act - first of all, it is important to determine who is the taxpayer on account of the dividend received. It is the person of

the non-resident taxpayer who decides whether and which international agreement will apply in order to avoid double taxation.

However, in order to determine who is a taxpayer on dividend income paid by the Applicant - i.e. income of this kind, which is also covered by the OECD Model Convention regulations and Polish-Cypriot agreements, one should first refer to national law, i.e. the law of the country of the source of income . There is no doubt that the provisions of the agreement on the avoidance of double taxation can only be applied to an entity which under national law has the status of a taxpayer in relation to a given type of income (see judgment, III SA / Wa 2230/07 and I SA / Wr 280 / 10 - cbois.nsa.gov.pl). When taxing revenues generated on the territory of the Republic of Poland by taxpayers referred to in art. 3 clause 2 updop, the taxpayer should be determined first, and only later, guided by the place of residence or seat of that taxpayer, apply the provisions of the relevant international agreement regarding the determination of the appropriate tax rate. Therefore, the reduced withholding tax rate can only be applied if the taxpayer - i.e. the person to whom the dividend is paid is at the same time "the person entitled to dividend" according to the OECD and individual double taxation avoidance agreements (containing the "beneficial owner" clause). There must therefore be a taxpayer identity within the meaning of national law, a person receiving a dividend and a person entitled to a dividend - who is also a non-resident. Therefore, the mere fact of being a resident of a particular country and receiving a payment is not a sufficient condition to benefit from the provisions of double taxation treaties where the right to dispose of income is limited. This means that the provisions of double avoidance agreements apply to entities that are the actual recipients of the dividend on whose side the actual gain (income) occurs. Consequently, if a Polish entity makes a dividend payment to a tax resident of another country who is not a person entitled to this dividend, then Poland is not obliged to apply the provisions of double taxation treaties. that the provisions of double avoidance agreements apply to entities that are the actual recipients of the dividend on whose side the actual gain (income) occurs. Consequently, if a Polish entity makes a dividend payment to a tax resident of another state who is not a person entitled to this dividend, then Poland is not obliged to apply the provisions of double taxation treaties. that the provisions of double avoidance agreements apply to entities that are the actual recipients of the dividend on whose side the actual gain (income) occurs. Consequently, if a Polish entity makes a dividend payment to a tax resident of another

country who is not a person entitled to this dividend, then Poland is not obliged to apply the provisions of double taxation conventions.

Therefore, the applicant's position is incorrect, which identifies the owner of the dividend only with the entity claiming its payment and having the right to dispose of it. As the authority rightly argues, the economic and real owner of dividend paid capital is entitled to the status of entitled person. The authorized owner may therefore be an entity with the right to the abovementioned dividends as well as the right to use this dividend as its owner, not the entity actually having the right to receive it.

In the present case, bearing in mind the abovementioned the facts of the case, in the opinion of the Court, were right to be granted to the tax authorities, which they recognized, but only against the background of the above regulations that the Cypriot company cannot be assigned the status of the entity authorized to the abovementioned dividends, despite the existence of a formal and legal right to obtain the abovementioned dividend. Undoubtedly, the Cypriot company did not have a real right to free use of funds from the abovementioned dividend. Therefore, one should agree with the tax authority that the entities ultimately entitled to dividend income - but only in the light of the abovementioned regulations, i.e. the UPO agreement and the Commentary to the OECD Model Convention set up in its aspect, art. 91 section 1 of the Constitution of the Republic of Poland of April 2, 1997 and Art. 31 section 1 of the Vienna Convention on the Law of Treaties of May 23, 1969, were natural persons resident in the Republic of Poland - it is because of these entities that the final and definitive settlement took place. In this respect, the authorities reasonably referred to the chronology of legal and factual actions carried out in the case under consideration and invoked by the applicant, as well as their final factual and tax-related effect, in particular in relation to the fact that the applicant excluded profit from the years before 2013 and accumulated it supplementary and reserve capital - to then, together with the profit for 2013, make its payments in 2014, but not to the existing partners, residents of the Republic of Poland who are natural persons, but to the abovementioned a Cypriot company which, on the same day, via a Slovak company, de facto transferred the amount of the abovementioned dividends JK and JB as general partners of a Slovak company.

Therefore, the allegation of violation of art. 10 paragraph 2 lit. and the above UPO contracts, but only to the extent indicated above - by refusing the right to apply a 0% tax rate when paying a dividend to a Cypriot company.

At the same time, the Court emphasizes that the authorities' determination that the Cypriot company, against the background of the above provisions and regulations, in the case under consideration is not a person entitled to dividend, results in a lack of obligation but also the right to apply the abovementioned double taxation conventions and related regulations. Thus, neither of the above the Polish-Cypriot agreement or the regulations established by it in its aspect may not constitute a fundamental and autonomous legal basis for taxing the abovementioned the amount of dividend and either a redefinition or omission of legal acts in relation to the payment indicated by the Applicant and related to its payment - as the authority actually considered using the above regulations as the basic legal basis for the application of art. 30a paragraph 1 point 4) update

In the Court's opinion, it is not possible to apply the abovementioned of the UPO agreement results in the obligation for the authority to apply, in the case under consideration, national provisions relating to taxation of the disputed dividend, without the provisions of the abovementioned agreement. The court notes, however, that these (national) provisions should also be applied already at the stage of determination by the authority or the abovementioned the Cypriot company is an entity entitled to the abovementioned dividends and thus whether the provisions of UPO agreements may apply. If it were to consider the position of the authorities as correct, i.e. consider that the provisions of contracts and regulations related to it, constitute the basic or independent legal basis for redefining or omitting legal actions in relation to those indicated by the applicant as regards the payment of the abovementioned dividends and applications in the abovementioned updof rules, thus, it would have to be considered that those rules and regulations actually fulfill the function of a general tax avoidance clause. This position, however, has no legal basis.

Having regard to the above circumstances, the Court admitted the applicant's argument that the inapplicability in the abovementioned case contract and regulations related to it results in the obligation to apply to tax the abovementioned dividend amounts, national regulations. The court observes that the above results, however, and that the authority is entitled and obliged to apply also those national provisions which relate to the possibility of redefining or omitting legal acts in relation to the payment indicated by the applicant and made in the scope of its payment, provided that such provisions apply in a given legal order. Therefore, in the present case, undoubtedly, Article 22 paragraph 2 updop, cited by the applicant, and the fulfillment of formal and legal conditions which is not questioned by the authority. Application in the abovementioned

case Art. 22 paragraph 2 u. pdop may, however, be challenged, but only if the authorities, effectively and on the basis of properly conducted proceedings prove that there are no grounds for its application. In the Court's assessment, however, the authorities did not carry out such proceedings in the case under consideration.

However, the court clearly and reiterates that the exclusion of application of the provisions of the above UPO agreements and the obligation to apply national provisions do not exclude on the side of tax authorities the right to seek regulations in national provisions enabling them to redefine or omit the type of legal actions in relation to those indicated by the taxpayer and constituting transactions aimed at tax avoidance.

In the above scope, it should be noted that the authorities somehow "sideways" indicated in the justification of the decisions issued the provision of Art. 199a Op, which they did not indicate in the legal basis of the decision. The authorities clearly indicated that the decision regarding taxation of the abovementioned dividends based on the updof based on the provisions of the above the UPO agreement and the Commentary to the OECD Model Convention cited in its aspect, and views presented in other sources, art. 91 section 1 of the Constitution of the Republic of Poland of April 2, 1997.

and art. 31 section 1 of the Vienna Convention on the Law of Treaties of May 23, 1969. In this respect only, in principle, the authorities referred to the facts of the case.

So, going to the regulation of art. 199a Op, it should be noted that pursuant to art. 199a Op, when determining the content of a legal transaction, the tax authority takes into account the consistent intention of the parties and the purpose of the operation, and not only the literal wording of the declarations of will made by the parties to the legal transaction (§ 1). If, after the appearance of a legal act, another legal act has been carried out, the tax consequences are derived from this hidden legal act (§ 2).

It should also be emphasized that the legal status in the case under consideration applies

2014, in which there were no legal provisions in Polish law introducing a general tax avoidance clause. This clause was introduced into the Polish legal order by the Act of May 13, 2016 amending the Tax Ordinance Act and some other acts (Journal of Laws of 2016, item 846) and is only effective from July 15, 2016. Issues related to the application of the provisions of this clause in time is governed by Article 7 of the Amending Act, according to which: "The provisions of Articles 119a-119f of the Act amended in Article 1 shall apply to the tax benefit obtained after

the date of entry into force of this Act." Therefore, the anti-tax avoidance clause applies to tax benefits obtained after the entry into force of the amending Act, i.e. from 15 July 2016. Therefore, the authorities in the case under consideration were not authorized to use such arguments as if the anti-tax avoidance clause had been applied. In the legal situation in force in 2014 (applicable in the present case), the general clause prohibiting tax avoidance did not apply, which is tantamount to a ban on tax authorities bypassing the tax consequences of a legal act carried out solely for the purpose of obtaining a tax benefit.

The court further indicates that it is required to respect the acquis. In particular, in the judgment of 11 May 2004 K 4/03 (cf. (Journal of Laws of 2004 No. 122, item 1288), the Constitutional Tribunal recognized that "by giving tax authorities and tax inspection authorities, when resolving a tax case the right to ignore the effects of legal acts which may result in a taxpayer's benefit in the form of a reduction in the amount of the tax liability, an increase in overpayment or refund - it violates the principle of citizens' trust in the state and law (...) ".

In the cited judgment, the Constitutional Tribunal stressed the need for the legislator to guarantee tax and legal regulations with maximum predictability and computability of decisions taken against taxpayers. If the taxpayer performs activities that are lawful and their purpose is not prohibited by law, the tax result achieved in this way should not be treated as prohibited by the taxpayer. Omitting the legal effects of the actions performed would probably be possible in the old legal order, under the rule of art. 24b § 1 Op, but this provision is no longer in force and it was not in force in the legal status of the case being examined. The Constitutional Tribunal, in a judgment of May 11, 2004, K 4/03, declared this provision incompatible with the Polish Constitution. In the court's opinion, if art. 199 §1 Op would constitute sufficient regulation to challenge the tax consequences of legal acts solely due to the so-called tax optimization, it would be superfluous to introduce regulations regarding a tax avoidance clause. The court assumes that the Legislator is rational. Consequently, as long as the legal act is valid, the tax authority is obliged to respect the effects that the tax system has on the type of act. Since the Applicant acted within the law, any "tax optimization" cannot, by itself, prove and justify questioning the effects of legal actions under tax law. Since in 2014 there was no legal regulation containing a clause against tax avoidance (see judgments: Supreme Administrative Court of January 15, 2016, II FSK 3162/13, Provincial Administrative Court in Gdańsk of July 13, 2016, I SA / Gd 369/16, WSA in Warsaw of November

7, 2018, III SA / Wa 4199/17; CBOSA), it is the tax authorities that cannot take action without a (sufficient) legal basis, without distorting the institution from art. 199a § 1 and § 2 Op

The court also indicates that the literature indicates that the regulation of Art. 199a § 1 Op complements Art. 122 and art. 191 Op, which determine the tax authorities to conduct evidence ex officio and to carry out the assessment of evidence freely (cf. vol. 1 in P. Pietrasz, Commentary on Article 199a in L. Etel [ed.], Tax Code. Commentary updated, public SIP LEX / el 2019).

In the case-law, however, it was pointed out that any classification of events under tax law cannot take place unless the taxpayer's status of behavior under private law has been established beforehand and the consequences it has caused (cf. judgment of the Supreme Administrative Court of 6 December 2011, I FSK 1591/10, public CBOSA). The analyzed provision contains directives for reading the content of a legal act in accordance with the intentions of the parties to the act, and thus in order to know the real will of the parties to that act. Interpretative guidelines give priority to the agreement of the parties and the purpose of the contract over the literal wording of the statements made. The actual purpose and intentions of the parties to the concluded contracts result from all of their activities, and their proper assessment requires an analysis of the entire series of events.

It should also be emphasized that in the case under consideration the authorities referring to the abovementioned Art. 199a Op (although not as the main basis for the settlement) claim that in the case no payment of the abovementioned dividend amounts neither by the applicant company to the Cypriot limited liability company nor by the Cypriot company to the Slovak limited partnership, nor the profit by the Slovak company to JK and JB as its general partners. In the authorities' opinion, as a result of the appropriate shaping of legal relations, the applicant was paid dividend to the abovementioned company. natural persons, i.e. JK and BK, because as indicated by the authorities, in the year preceding the payment of dividend and in the year of dividend, these persons undertook many activities, which were in fact intended to avoid payment of personal income tax due to the dividend being paid to them by the applicant company. However, as indicated by the authorities, the dividend included not only the profit achieved in 2013 but also the profit from previous years, excluded from distribution, accumulated on the applicant's supplementary and reserve capital. Thus, when applying for the application of Art. 30a paragraph 1 point 4) updof, the authorities have done so somewhat sideways

among others based on Article. 199a Op. In fact, they redefined or omitted legal actions in relation to the legal actions indicated by the Applicant related to the payment of the abovementioned dividends: i.e. legal transactions including, among others:

1) establishing a Cypriot and Slovak company;

2) an increase in the share capital of the Cypriot company and the acquisition of shares thus created in its share capital by JKi BK, who in-kind paid the shares in the form of all shares held in the applicant company;

3) taking up shares in a Cyprus company by a Slovak company by contributing them - by JKi BK - to a Slovak company;

4) resolution of the Ordinary General Meeting of the Applicant company No. 6 of [...] on the allocation of net profit for 2013.

and undistributed profits from previous years accumulated on supplementary and reserve capital to be paid as dividend to the sole shareholder, i.e. the Cypriot company;

5) resolution adopted by the body of the Cypriot company on the distribution of profit for 2013.

and intended for payment to a Slovak company;

6) resolution of the partners of a limited partnership of Slovakia as regards distribution of profit for 2013 and its payment to general partners in person

JK and BK

The authorities did not question the formal and legal regularity of the legal acts constituting the abovementioned disputed dividend payment transactions. However, in the opinion of the above authorities the acts were carried out in conditions in which only JK and BK appeared in a different nature depending on the legal status at the moment, i.e. as an independent general partner of a Slovak company, managing director of a Cypriot company, independent member of the management board of the applicant company, shareholder of the Cypriot company and the applicant companies, general partner of a Slovak company or taxpayer, and the entities established in the form of a Cypriot and Slovak company did not conduct actual business activity. In the above context, the authorities indicated, but only "sideways", that the conditions of art. 199a Op, but at the same time they indicated that the basic legal basis for the application in art. 30a paragraph 1 point 4 of the updof are the provisions of the above Polish-Cypriot agreement.

Therefore, the court concluded that the authorities in the case under examination had not demonstrated, as a result of properly conducted proceedings, that the conditions of the above provision of art. 199a Op, which could result - in the case under consideration - bypassing or redefining legal transactions making up the above-mentioned transaction related to the payment of dividend and the application of tax to it 30a updof The court should note, as the Supreme Administrative Court reasonably pointed out in its judgment of 15 January 2016,

II FSK 3162/13 and the Provincial Administrative Court in Warsaw in a final judgment of November 7, 2018, III SA / Wa 4199/17 that:

- provision of art. 199a § 2 Op shall apply only if it is found that an apparent legal act has been made, and not only a legal act carried out solely to achieve the intended tax result, which, however, does not have the characteristics of a virtual act;

- according to art. 199a § 2 Op only one of the sham features listed in Art. 83 § 1 of the Act of April 23, 1964 - Civil Code (Journal of Laws No. 16, item 93 as amended) is used, namely when the parties perform an apparent (simulated) act in order to hide a legal (simulated) act whose legal effects they actually want to have; in the case of appearances, therefore, the identity of the parties to the simulated and simulated legal act must exist;

- that - pursuant to art. 199a § 1 Op - while determining the content of a legal transaction, the tax authority is required to examine the consistent intention of the parties and the purpose of the operation, and not only the literal wording of the declarations of will made by the parties to the operation, does not mean that it may simultaneously apply other means than those provided for in art. 199a § 2 Op

The court hearing the present case fully shares the above argumentation in the scope of application and interpretation of Art. 199a Op

Given the above circumstances, in the opinion of the Court, as in the abovementioned cases with reference number Acts: II FSK 3162/13 and III SA / Wa 4199/17, also in the present case, the arguments used by the tax authorities do not indicate that the above-mentioned legal acts were carried out under the conditions of fictitiousness, which is stated in Art. . 199a § 2 Op in connection with art. 83 § 1 of the Civil Code, although they were undoubtedly made in order to minimize the tax burden, and even avoid the payment of income tax by JK and BK. In particular, all the actions of the applicant, JK and BK as well as the Cypriot and Slovak companies were taken on the basis

of applicable law, which no question. Similarly, all the legal effects referred to by the applicant regarding the payment of the abovementioned dividends resulted from this right.

According to the Court, the tax authorities have not demonstrated that the activities constituting legal transactions constituting a transaction related to the disputed dividend payment were not taken on the basis and within the limits of applicable law, and that the effects of these activities were not provided for by law or violated the law: nor tax or business in the broad sense. The court is not entitled to act in this respect in place of the authority, and to independently demonstrate the reasons for applying in the case of art. 199a Op - such an action would violate not only the rights of the Court but also the applicant's right to hear her case in tax proceedings. The court notes, however, that you cannot refuse a Party and JK and BK or the ones granted by the Legislator (Polish, Cypriot or Slovakian) the right to use the structures of commercial law entities (limited liability company, limited partnership, property and corporate rights of a partner in a limited liability company, the rights of a general partner of a limited partnership), or the right to form economic relations with the greatest benefit. None of the provisions known to the Court contain any restrictions as to the manner in which the applicant conducts business activity and its partners, as well as the manner in which the profit from this business activity is redistributed. However, the basis of the right to this action indicated by the authority, in the form of the abovementioned provisions. the Polish-Cypriot agreement, as already indicated above, may not constitute an independent legal basis for redefining or omitting the taxpayer's correct legal actions under Polish tax law. The authorities de facto pointed to a violation of the law, including Art. 199a Op, consisting in shaping the content of legal actions in such a way that from a formal point of view they did not oppose the law, but in fact aimed at achieving the objectives prohibited by law, i.e. bypassing taxation, which in itself does not constitute grounds for applying Article . 199a Op However, the Court notes that the application of the law is not a "prohibited purpose" by law, nor is this purpose a Party's use of the mechanisms created by the legislator. 199a Op, consisting in shaping the content of legal actions in such a way that from a formal point of view they did not oppose the law, but in fact aimed at achieving the objectives prohibited by law, i.e. bypassing taxation, which in itself does not constitute grounds for applying Article . 199a Op However, the Court notes that the application of the law is not a "prohibited purpose" by law, nor is this purpose a Party's use of the mechanisms created by the legislator. 199a Op, consisting in shaping the content of legal actions in such a way that from a formal point of view they did not

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It is the legislator's task to shape the law, especially tribute law, to achieve his goal. Charging the Party with the consequences of the legislator's inefficiency in this respect goes beyond the scope of the allowed slack granted in the operation of state organs in order to implement an action that inspires the trust of citizens. To enable the application of art. Art. 30a paragraph 1 point 4, the update would have to occur (in the actual and legal state) the conditions for the application of these provisions, which due to the factual state of the case (compliance with domestic, Slovak and Cypriot law) of the Party's activities - there was no body in relation to art. 199a Op did not show otherwise.

That pursuant to art. 199a § 1 Op, when determining the content of a legal transaction, the tax authority is required to examine the consistent intention of the parties and the purpose of the operation, and not only the literal wording of the declarations of intent made by the parties to the operation, does not mean that it is an independent basis to question the effects of the legal transaction for tax purposes , the application of which may be reduced to demonstrating by the authorities only tax benefits resulting from activities carried out by taxpayers, omitting the elements necessary to demonstrate that such activities were apparent within the meaning of Art. 199a Op

in connection from art. 83 § 1 of the Civil Code

The court indicates that the tax authorities are not entitled to such an interpretation

(and consequently - application) of law, which would essentially amount to creating norms of law, not provided for by the legislator, at the date of the dispute: especially in relation to the unequivocal statement of the Constitutional Tribunal, cited above. There is no such power from the acquis (cf. judgment of WSA III SA / Wa III SA / Wa 41999/17).

Having regard to the above considerations, as regards the allegation of violation of Art. 199a Op, the General Court found the above complaint partly justified. In the opinion of the Court, the authorities did not - firstly indicate that Art. 199a constituted the basic taxable base for the abovementioned dividend amounts pursuant to art. 30a paragraph 1 point 4) updof, indicating it in essence - in the justification - as a possible legal basis - and completely omitted it in the part of

reference to the legal basis issued on decisions. Secondly, citing the abovementioned in fact, as a margin, the provision actually directed the arguments contained in issued decisions as supporting the thesis on the application in art. 30a paragraph 1 point 4) updof based on the provisions of the above-mentioned Polish-Cypriot agreement and regulations concerning it. Same organs, although they cited art. 199a Op, however, did not show in full that the conditions for its application in the case justifying the thesis that it could constitute a basis for reclassification or omission of legal acts indicated by the applicant and constituting the transaction of the disputed dividend payment were met. However, the Court indicates that the scope of the conditions for applying Art. 199a Op does not coincide with the scope of the conditions for the application of Art. 119a - 119f Op governing the general tax avoidance clause, which - as indicated above - do not apply in the present case. The court notes that the authority also agreed with the Party that this provision does not play the role of a general clause against tax avoidance, as indicated by the judgments of administrative courts cited, as well as the position of the Ministry of Finance. Thus, the applicant's allegations proved that since the authority actually made its findings - in reference to art. 199a Op, based on the assumption that the applicant's action was artificial and devoid of economic rationale, aimed at avoiding taxation and thus contrary to the object and purpose of the Tax Act, thus demonstrating that the conditions for the application of the abovementioned Art. 119a - 119 f Op the conditions for the application of art. 199a Op. The applicant has rightly pointed out in this regard that the mere fact that natural persons have not paid personal income tax cannot constitute a condition for the circumvention or reclassification of legal acts constituting the abovementioned transaction based on art. 199a Op is based on the assumption that the applicant's action was artificial and without economic reasons, aimed at avoiding taxation and thus contrary to the object and purpose of the Tax Act, thereby demonstrating that the conditions for the application of the abovementioned Art. 119a - 119 f Op the conditions for the application of art. 199a Op. The applicant has rightly pointed out in this regard that the mere fact that natural persons have not paid personal income tax cannot constitute a condition for the circumvention or reclassification of legal acts constituting the abovementioned transaction based on art. 199a Op is based on the assumption that the applicant's action was artificial and without economic arguments, aimed at avoiding taxation and thus contrary to the object and purpose of the Tax Act, thus demonstrating that the conditions for the application of the abovementioned Art. 119a - 119 f Op the conditions for the application of art. 199a Op. The applicant has rightly pointed out in this regard that the mere fact

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Referring further to the allegations related to the violation of the provisions of Art. 14m § 1 item 1 and 2 in connection from art. 14k § 1 in connection from art. 121 § 1 Op

in connection from art. 94 section 2 ukas, by omitting in the present case individual interpretations issued at the request of BK and JK, on the basis of which the applicant made her tax settlements, the Court did not, in principle, divide these allegations.

The court observes, as the tax authorities reasonably pointed out, that the scope of the facts as adopted when issuing the abovementioned tax interpretations did not coincide with the scope of the facts of the case. As - also reasonably - the authorities indicated that it is established that JK and BK

in the actual state of the application for the issue of the above the interpretations omitted the information that the Cypriot company will own 100% of shares in a Polish capital company (limited liability company) and will receive income in the form of dividends paid. They also omitted the fact that, being partners of a Polish limited liability company, they would transfer all their shares to a Cypriot company (by taking up newly created shares of the Cypriot company and covering them with an in-kind contribution in the form of all shares held in the Polish company), as a result of which the Cypriot company will become the sole shareholder Polish limited liability company. Therefore, he also reasonably pointed out to the tax authority that the interpretative authority was not able to respond to the abovementioned issues. Position of the authority,

Referring last of all to the allegations regarding the violation of other procedural provisions, in the Court's view, accepting the allegation of Art. 199a Op in the abovementioned in this respect, it is also irrelevant to refer in this regard to the other complaints, in particular those concerning violation of the procedural provisions that are secondary to the abovementioned.

Nevertheless, due to the Court's recognition that the authorities had reasonably applied in the abovementioned case provision of art. Art. 10 paragraph 2 above of the Polish-Cypriot Agreement and regulations related thereto, to the extent indicated by the Court above, it should be noted that the Court did not share the remaining complaints regarding the violation of the provisions of the procedure in connection with the application of the above-mentioned provisions. agreement.

The court therefore indicates that pursuant to Article 187 § 1 Op, tax authorities are obliged to comprehensively collect and examine all evidence, and then, in accordance with Article 191 Op, assess, on the basis of all evidence gathered, whether the circumstance has been proved. The authority as evidence may admit anything that can contribute to the clarification of the case and is not unlawful (Article 180 § 1 Op). The court also emphasizes that it is not disputed that in proceedings tax authorities are required to take the necessary actions to accurately clarify the facts and settle the case in accordance with the principle of material truth expressed in art. 122 Op, since establishing the facts of the case is an essential element for the correct application of substantive law norms, which in turn involves the implementation of the rule of law as expressed in Article 120 Op These principles are reflected in detailed procedural provisions, inter alia in art. 122, art. 187 § 1 and art. 191 Op

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Referring last of all to the allegations regarding the violation of other procedural provisions, in the Court's view, accepting the allegation of Art. 199a Op in the abovementioned in this respect, it is also irrelevant to refer in this regard to the other complaints, in particular those concerning violation of the procedural provisions that are secondary to the abovementioned.

Nevertheless, due to the Court's recognition that the authorities had reasonably applied in the abovementioned case provision of art. Art. 10 paragraph 2 above of the Polish-Cypriot Agreement and regulations related thereto, to the extent indicated by the Court above, it should be noted that the Court did not share the remaining complaints regarding the violation of the provisions of the procedure in connection with the application of the above-mentioned provisions. agreement.

The court therefore indicates that pursuant to Article 187 § 1 Op, tax authorities are obliged to comprehensively collect and examine all evidence, and then, in accordance with Article 191 Op, assess, on the basis of all evidence gathered, whether the circumstance has been proved. The authority as evidence may admit anything that can contribute to the clarification of the case and is not unlawful (Article 180 § 1 Op). The court also emphasizes that it is not disputed that in proceedings tax authorities are required to take the necessary actions to accurately clarify the facts and settle the case in accordance with the principle of material truth expressed in art. 122 Op, since establishing the facts of the case is an essential element for the correct application of substantive law norms, which in turn involves the implementation of the rule of law as expressed in Article 120 Op These principles are reflected in detailed procedural provisions, inter alia in art. 122, art. 187 § 1 and art. 191 Op

The tax authority is obliged to take actions that are necessary to thoroughly clarify the case, to exhaustively investigate all the factual and legal circumstances related to the specific case in

order to reproduce its actual image and obtain the basis for the correct application of the law (Wacław Dawidowicz; General administrative proceedings, System outline; Warsaw 1962, p. 108). Both evidence and its guilty assessment - in accordance with art. 210 § 4 Op, to be reflected in the justification of the tax decision by indicating the facts that the authority considered to be proven, the evidence by which he believed and the reasons for which he refused credibility with other evidence. The legal justification must include an explanation of the legal basis of the decision, citing the law.

In the case at hand, the tax authorities of both instances, in the opinion of the Court, and contrary to the applicant's allegations, the above conditions were met with regard to the application of the abovementioned provisions. Polish-Cypriot agreement to the extent indicated by the Court.

At the same time, according to art. 210 § 1 item 6 and art. 210 § 4 Op, the decision of the first and second instance bodies extensively describes the factual findings made in the course of the proceedings and their assessment. The authority in its considerations took into account relevant for art. 10 paragraph 2 above contracts legal transactions that were made in connection with the questioned payment of dividends, established their chronology in terms of establishing individual entrepreneurs, their capital and personal changes, determined entities having a real impact on the implementation of the above. activities by specifying their functions within individual transaction entities. The authority also determined the impact of these activities on the determination of the entities which ultimately received funds from the dividend paid by the applicant for 2013.

2013, by excluding it from the division and transferring to the applicant's reserve and supplementary capital. The factual findings in this regard are not in fact disputed by the applicant, which, however, draws different conclusions from the evidence on which it is based.

In the opinion of the Court, the analysis of evidence gathered in the case provided a sufficient basis for the adopted, in the light of art. 10 paragraph 2 above of the Polish-Cypriot agreement establishing that the de facto final and real recipient of the dividend paid by the applicant for 2013 was not actually a Cypriot company but natural persons, i.e. and Cyprus in the economic and economic aspect, with the exception of the benefit associated with the possibility of not taxing the abovementioned dividend amounts. In the opinion of the Court, the authorities also reasonably questioned the existence of the above-mentioned groups of companies within the holding structure, indicating the actual inactivity of the Cypriot and Slovak companies in the roles assigned to them by the applicant as entities belonging to the holding.

The authorities therefore gathered complete evidence in the case

- in the assessed scope - they referred to individual evidence and evaluated the evidence in accordance with the principle of free assessment of evidence, i.e. not exceeding the rules of logic or the principles of life experience

- which was reflected in the content of the contested decision. The court also observes that the applicant was granted active participation at every stage of the proceedings and was given the opportunity to comment on the evidence gathered before the decision was taken.

To sum up, the Court found, as partly justified, the complaint alleging infringement by the authorities of Art. 199a Op and in this respect also the allegation of violation of Art. 233 § 1 item 1 and 2 of the Op and art. 121 § 1 Op

When reconsidering the case, the authorities should take into account the legal assessment presented in this justification.

Bearing in mind the above considerations, the Court, pursuant to art. 145 § 1 item 1 letter a) and c) of the Act of 30 August 2002 Law on proceedings before administrative courts (Journal of Laws 2019, 2325, as amended), ruled as sentence.