

# TAX ALERT

## Precedential judgment of the CJEU on VAT obligation point in relation to construction services - C 224/18, Budimex S.A

On 2 May 2019 the Court of Justice of the EU handed down a precedential judgment in a Polish case concerning the moment when VAT obligation arises for **construction and assembly services** (case C 224/18, Budimex S.A.).

The Court accepted that performance of building services takes place at the moment of the official handover/acceptance of this service if:

- a) the parties' contract provides (e.g. by way of a reference to the FIDIC rules) that a **handover/acceptance protocol** is necessary for the performance of the building service;
- b) the formal handover protocol is contractually defined as moment of completion of the service and setting forth the final amount of payment due for the service.

According to the CJUE in such circumstances **the VAT obligation arises upon the lapse of 30 days from the moment of the signing of the handover/acceptance protocol**, and not upon the lapse of 30 days from the moment of actual (physical) completion of the building work (unless respective invoice was issued earlier).

This judgment differs from the hitherto position of the Minister of Finance and of Polish administrative courts, which treated rather the moment of actual completion of works as the moment of performance of the service, regardless of handover/acceptance formalities.

This judgment may in some cases also apply in relation to cases in which work was not fully completed because of a dispute, while the tax authorities required settlement of VAT on work partially performed.

Pursuant to the Polish Tax Ordinance, within **one month** as from an official publication of the judgment it is possible to renew tax proceedings in final tax decisions which differ from the position taken by CJUE in this judgment.

If you are wondering whether the judgment of the CJEU may be applicable in your case, also in the context of carrying out the entire procedure of renewing tax proceedings, we invite you to contact us.



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