

Tax rulings in Poland – the wealth or the crisis?

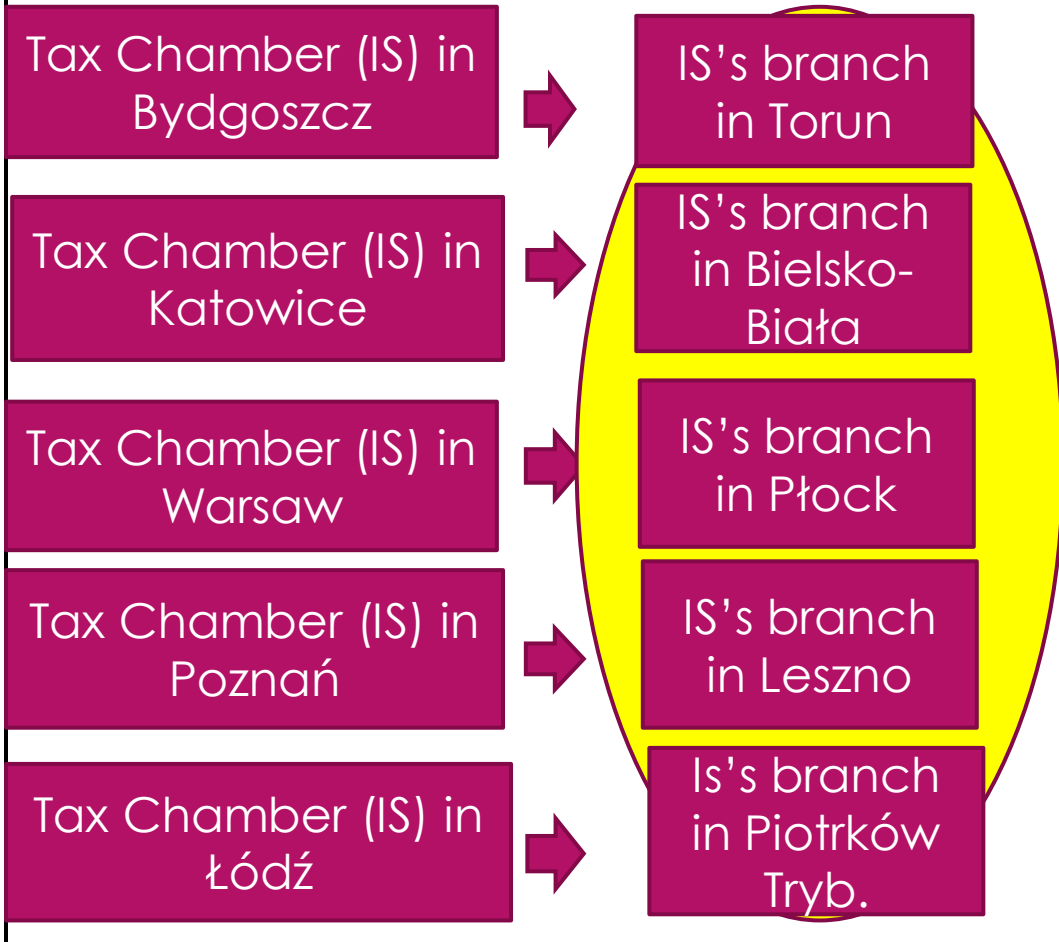
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Poland – the state of tax rulings

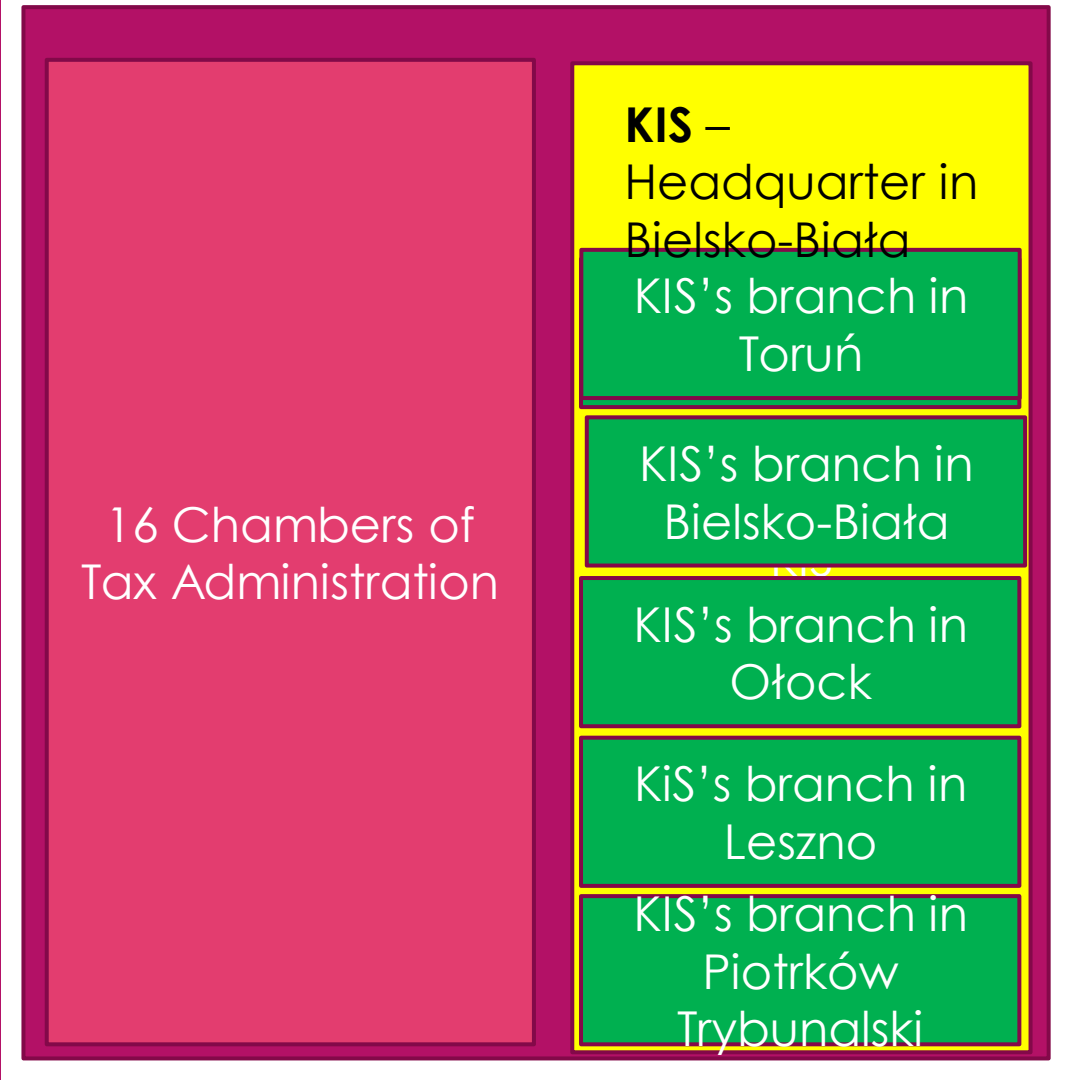
- ▶ Public (general) interpretations (rulings)
- ▶ Tax explanations
- ▶ Private (Individual) interpretations (more and more types...)
- ▶ Protective opinions
- ▶ Advance pricing agreements
- ▶ Excise interpretation
- ▶ Customs interpretations (based on EU law) such as binding tariff informations

How it works...

▶ Until 1.01.2016



▶ From 1.01.2016- **KAS**



Why are there so many tax rulings in Poland (until January 1, 2016)?

- ▶ The private rulings were (and still are) inexpensive - the fee for issuing a ruling: only PLN 40, (i.e. less than EUR 10)
- ▶ Taxpayer could ask about all regulations in force in State
- ▶ It was possible to repeatedly ask about the same issue
- ▶ Private ruling could be requested even if a general ruling had already existed
- ▶ The rulings were not binding on the tax authority but the taxpayer was entitled to file an application for a tax exemption - effective taxpayer's protection

„Money makes the world go around”

- ▶ Taxpayer's ruling cost– 40 PLN
- ▶ Tax administration's ruling cost– more than 1.000 PLN



The possibility of appealing against private rulings (similarly to tax decisions!)

- ▶ Appealing against ruling - cost for taxpayer (both court instances) -400 PLN (90 EUR)
- ▶ Appealing - cost for budget? (3 professional judges in first instance + 3 professional judges in the second instance + 2 justifications of judgments = 90 EUR?????)

New forms of "classic" rulings (from 1 January 2016)

- ▶ joint interpretation requests made by counterparties
- ▶ requests for interpretation concerning the actions of potential counterparties (only for entities concluding agreements based on the Public Procurement Act of 29 January 2004)
- ▶ established interpretation practice

„Wind of change” - 2016

- ▶ New structure of Polish tax administration (KAS)
- ▶ Regulating the relationship between individual and general interpretations
- ▶ GAAR and consequences

Obstructing the receiving of the ruling

1. If the interpretation authority comes to the conclusion that there is a reasonable suspicion that the action described in the request for an individual interpretation may constitute a basis for the application of GAAR, it must seek the opinion of the Head of KAS .
2. If the Head of KAS see „reasonable suspicion”, Director KIS will refuse the issuing of ruling (out of 29,955 requests filed in 2017 the interpretation **was refused** on these grounds in **650 cases**).
3. Taxpayer would apply for protective opinion (**20.000 PLN!!!**)

The taxpayer protection gets weaker

1. The provisions on the protection of the holder of a private ruling do not apply if the actual state or future events which are the subject of the interpretation constitute an element of the operations which are

- the subject of a decision issued on the basis of GAAR or
- in connection with the abuse of rights within the meaning of the provisions on value added tax.

(article 14na of the Tax Ordinance Act added on 15 July 2016)

2. Sad practice of tax authorities

„the description of the actual state or a future event in the request does not correspond to the actual course of the event”

Luxleaks scandal, rulings, unlawful State aid and harmful tax competition

- ▶ Big business of small State
- ▶ the Grand Duchy of Luxembourg and its former First Minister and Minister of Finance who did not know anything
- ▶ Poland is not Luxembourg but everyone must explain themselves



Thank you for your attention

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