

# Success Stories 2022



**LEGAL ADVISORY**

## SALE OF ADOB COMPANY AND CHEMICAL PLANTS "ZŁOTNIKI" TO DUTCH SPECIALITY CHEMICALS PRODUCER, NOURYON

We handled the sale of the shares of **ADOB**, Poland's largest producer of foliar fertilisers and exporter to more than 80 countries worldwide, to **Nouryon Chemicals International BV**, a world leader in speciality chemicals.

Legal services were handled by **Jakub Obiegły** and a team comprising **Marcin Borkowski Ph.D.**, **Joanna Butkowska** and **Adrianna Bobkiewicz**. On the tax side, the transaction was handled by **Mariusz Tkaczyk** and a team comprising **Michał Modrzejewski**, **Jacek Olczyk** and **Mateusz Pietranek**.



## LEGAL SERVICES FOR THE ORGANISATION OF BOTH THE MEN'S AND WOMENS'S VOLLEYBALL WORLD CHAMPIONSHIPS 2022

We provided full legal services for the conclusion of contracts between **the Polish Volleyball Federation** and **Fédération Internationale de Volleyball (FIVB)**. The agreements covered all issues related to the organisation of events in sporting, technical and administrative terms, and the regulation of advertising, marketing and broadcasting rights.

Responsible for legal advice were **Ewa Frieze** and **Rafał Pietruszewski**.



## LEGAL ADVICE ON THE ACQUISITION OF TADMAR BY 3W DYSTRYBUCJA BUDOWLANA SA

**3W Dystrubucja Budowlana SA** has signed an agreement to acquire **Tadmar Centrum Instalacji**. For the 3W Group, this is the largest acquisition in its history.

Tadmar is a leading distributor in the heating and sanitary installation industry. With the addition of Tadmar, 3W Group will have 1,300 employees and more than 100 wholesalers and stores, with projected consolidated revenue of more than PLN 2 billion in 2023.

**Ryszard Bartkowiak** was responsible for legal advice on the transaction.



## WE REPRESENTED A CLIENT BEFORE THE NATIONAL BOARD OF APPEAL IN A TENDER FOR THE SELECTION OF AN AIRPORT SYSTEMS INTEGRATION DESIGNER (ASID)

Our client participated in a tender for an airport systems integration designer. In the tender documents, the contracting authority decided to reserve as business secret the recordings of interviews of members of key personnel directed to carry out the contract and did not make the recordings available even to the contractors participating in the proceedings. These interviews formed the basis for awarding points in one quality criteria. The National Board of Appeal ordered the contracting authority to make these recordings available to bidders.

Responsible for advisory services: **Marta Lipińska** and **Michał Sękowski**.



## RESTRUCTURING OF ASSETS | CREATION OF AN INTERNATIONAL HOLDING STRUCTURE INCLUDING COMPANY IN LUXEMBOURG AND THE FOUNDATION IN LICHTENSTEIN

We advised the owner of a company serving wealthy individuals in Poland, Germany and Hungary and medical clinics in Poland, Italy and the United Arab Emirates. The advice related to asset restructuring.

We also implemented an international holding structure with a company in Luxembourg and a foundation in Liechtenstein, taking into account the international tax implications related to the flow of dividends and royalties.

The project was carried out by **Tomasz Piejak**.



## ADVISORY ON THE PURCHASE OF LUXURY GOODS AND REAL ESTATE

We have advised clients on the legal and tax aspects of realizing their dreams often unconnected to investments per se, but with ways to spend their leisure time, which sometimes leads to a commercial transaction. We advised on the purchase of, among other things, an ocean-going catamaran, works of art both ancient and modern and the acquisition of vacation properties in Italy, Switzerland and Spain.

Such cases were handled by **Aldona Leszczynska-Mikulska, Tomasz Piejak** and **Michal Zielinski**.



**TAX ADVISORY**

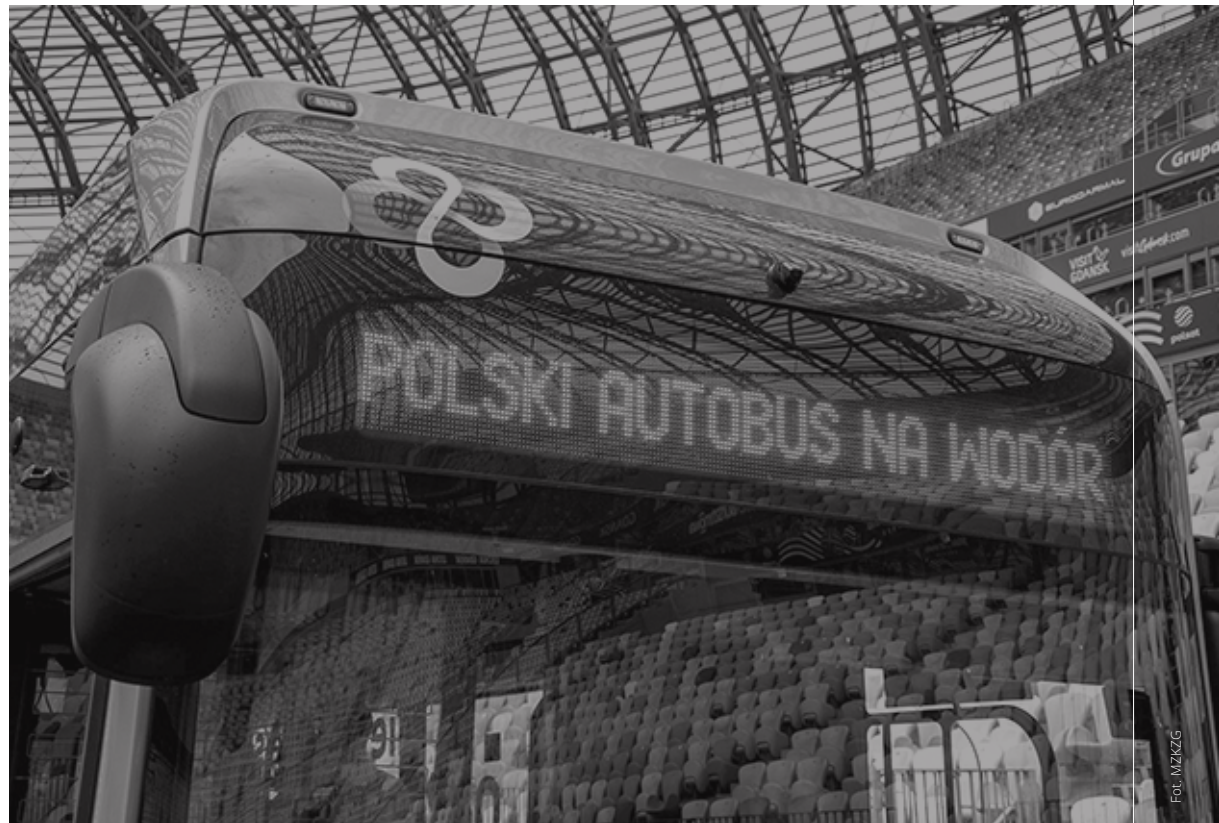
## TAX CONSULTANCY FOR THE PORT OF PRAGUE ON THE PURCHASE OF A 50% STAKE IN PPC II BY HB REAVIS

The team comprising **Mariusz Tkaczyk**, **Andrzej Próchnicki**, **Michał Modrzejewski** and **Artur Bubrowiecki** provided tax advice in a transaction estimated at **EUR 24.3 million**. Specifically, the holding company **HB Reavis** bought a 50% stake in the companies involved in investments in Warsaw's Praga Port being **Port Praski City II** and **Port Praski Medical Center**.

# SALE OF AN ORGANISED PART OF A COMPANY BY ZEPAK AND SUBSEQUENT PURCHASE OF PAKPCE SHARES

We advised on the tax aspects of the sale of the shares in **PAK Polska Czysta Energia** and transfer of ownership of the organized part of the **Konin Plant** to the **PAK-PCE Biopaliwa i Wodór p. z o. o.**

The project was handled by **Mariusz Tkaczyk**, **Andrzej Próchnicki** and **Mateusz Pietranek**.





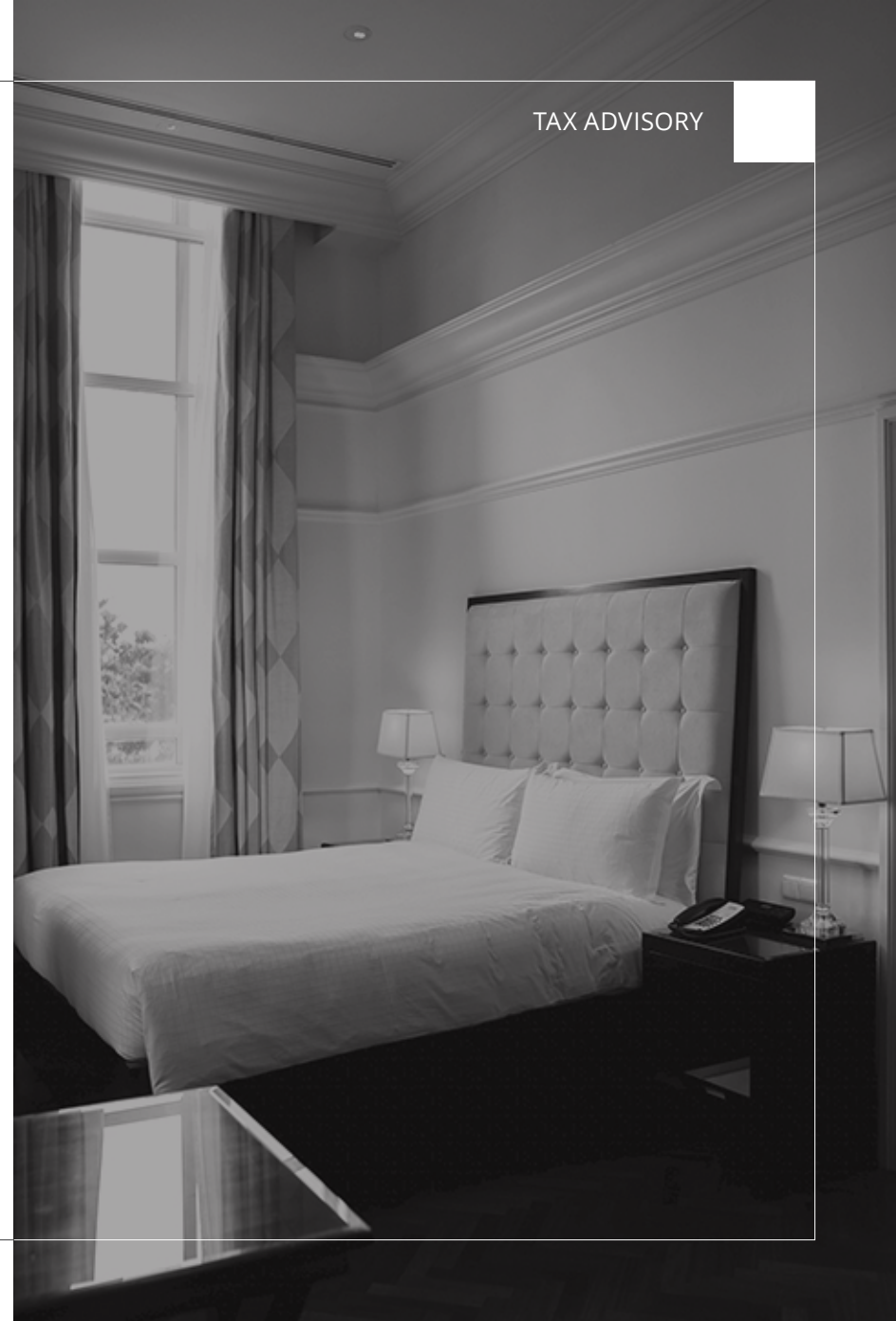
## SALE OF ALUMETAL SHARES – TAX ADVICE FOR MAJOR SHAREHOLDERS

We participated in the acquisition of **Alumetal**, the second largest producer of aluminium casting alloys in Europe, with a production capacity of 275,000 tons per year from three plants in Poland and one in Hungary. The company was bought by Hydro Aluminium Metal for around **PLN 1 billion** to create a better offering of low-carbon recycled aluminium.

Those responsible for the project were **Mariusz Tkaczyk, Andrzej Ladzinski, Michał Modrzejewski.**

# TAX CONSULTANCY ON THE PURCHASE OF THE BELVEDERE HOTEL

**TMS Spartaco** bought the Belvedere hotel in Zakopane. The transfer of ownership took place after several years of negotiation, discussions and dispute resolution, ultimately as a result of an agreement of which **Mariusz Tkaczyk, Andrzej Próchnicki** and **Agnieszka Szymańczyk-Iwanicka** were responsible for tax issues.



## RELOCATION ABROAD

2022 was another year in which our clients' interest in moving abroad increased. Their motivation for doing so is varied, but includes education, passions and business. We have supported our clients throughout their relocation process, from the most mundane administrative matters pertaining to tax planning in Poland and abroad to assisting with the choice of residence and relocation of assets (including cars) or transfer of resettlement property in terms of customs and excise duties. We have provided such advice for clients relocating to destinations including Switzerland, Italy and France.

Relocation projects were led by **Aldona Leszczyńska-Mikulska**, **Tomasz Krzywanski**, **Tomasz Piejak** and **Michał Zielinski**. **Sebastian Gumieła** was responsible for customs and excise issues.





## INFRINGEMENT OF THE PRINCIPLE OF THE PROTECTION OF LEGITIMATE EXPECTATIONS – THE IMPORTANT JUDGMENT CONCERNING THE INSTRUMENTAL INITIATION OF TAX PROCEEDINGS

**A favourable verdict has been reached in a dispute with the tax authorities lasting more than six years.** The court completely agreed with our argument that the commencement of the proceedings was instrumental and therefore could not have the effect of suspending the running of the limitation period for tax liabilities. Consequently, the WSA (Regional Administrative Court) in Warsaw reversed the decision of the Director of the Warsaw Tax Administration Chamber and the preceding decision of the Head of the Warsaw-Bemowo Tax Office and discontinued the administrative proceedings.

The court shared the view expressed in the earlier judgment regarding the correct accounting of the activities performed under the consortium agreement and the attention to the need to respect the principle of the protection of legitimate expectations and noted that "the claim for payment of this tax from the applicant does not serve to either to avoid fraud or to prevent an attempted fraud".

The case was managed by **Małgorzata Militz** and **Piotr Świstak**.

## SUCCESSSES IN VAT CAROUSEL PROCEEDINGS IN THE FMCG SECTOR

Two large FMCG groups obtained positive tax settlements thanks to the VAT litigation team: **Małgorzata Militz, Piotr Świstak, Marta Surmacz, Sylwia Lubelczyk, Angelika Dahms, Katarzyna Niedziałek.**

In the first of these cases, VAT and CIT tax proceedings, which had been ongoing for six years at the level of the first instance authority, came to an end. The authority fully agreed with the company's attorneys and discontinued the proceedings. Amounts in dispute were substantial: VAT – more than PLN 4.5 million, CIT – PLN 3.3 million (not including the amount of interest that would have been due for more than 10 years as the dispute concerned 2011 and 2012). There was also a successful conclusion to the dispute for another company in the group whereby the first instance authority discontinued the proceedings for 2015 and 2016 recognising the attorneys' arguments as legitimate. The amount in dispute exceeded PLN 2.5 million. For the second client, GWW's attorneys obtained a number of favourable decisions at the administrative court stage. On three occasions the administrative courts referred for reconsideration the decisions of the authorities seeking payment of PLN 1.8 million, PLN 250,000 and PLN 1 million respectively. In another case for the same group, the Supreme Administrative Court dismissed a cassation appeal against a judgment which overturned a decision of a tax authority, the amount in dispute being over PLN 1.3 million.

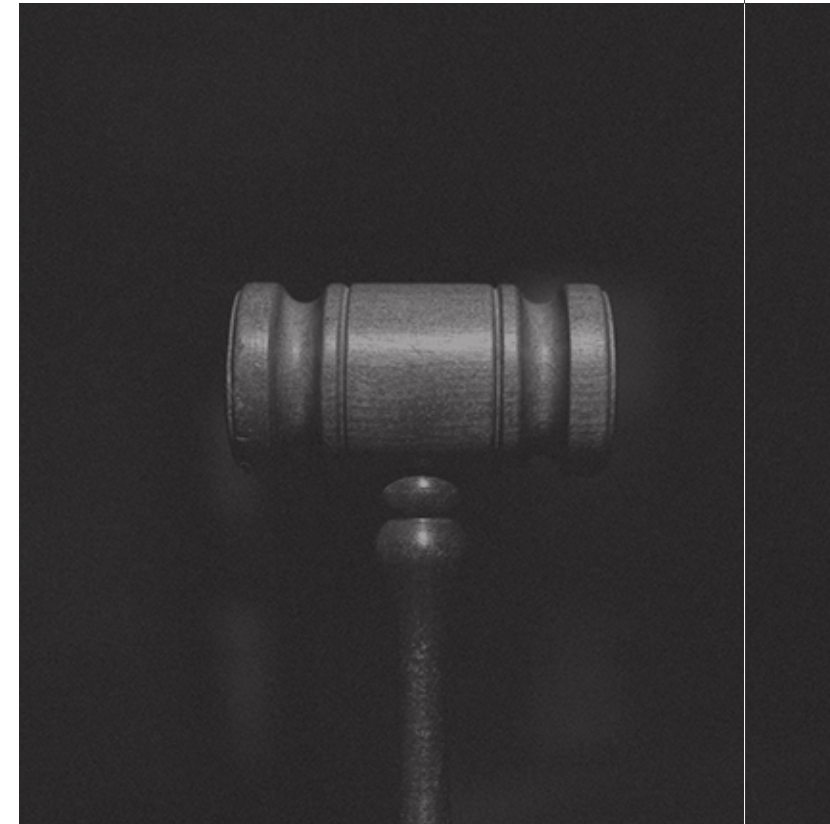


# JUDGMENT OF THE CONSTITUTIONAL COURT CHANGES THE APPROACH IN TERMS OF THE RELATIONSHIP WITH BUSINESS

GWW's interpretation of the legislation concerning property tax rate was confirmed. In the case in question, the municipal tax authority demanded that the objects of taxation held by the company be shown in the tax return at the rate for land related to the business activity. After refusal to comply with the request, tax proceedings were initiated, and a tax assessment decision was issued. With our interpretation of the regulations, neither the municipal authority nor the authority of the second instance agreed.

We were rightly upheld by the WSA, which upheld the complaint and confirmed that the TK ruling we cited was relevant to the case at hand, as it changed the previous approach to the issue of business-relatedness. The tax authority is obliged to conduct a tax investigation and determine whether the land is used and could potentially be used for business. There is no basis for simply assuming that what is in the possession of the entrepreneur should, by definition, be taxed at the highest rate.

The case was managed by **Kamil Szczęsny**.



TAX ADVISORY



## VICTORY BEFORE THE SUPREME ADMINISTRATIVE COURT REGARDING THE JUDGMENT REGARDING RULES FOR DETERMINING THE COMPANY'S DEDUCTIBLE COSTS

The Supreme Administrative Court issued a precedent-setting ruling on the principles of determining the tax deductible cost in the case of the sale of assets acquired through an in-kind contribution. The essence of the case was an answer to the question of what amount a capital company was entitled to recognise a tax deductible cost for the sale of an asset that was acquired by way of a non-cash contribution made after 1st January 2017 if the value of the subject of the contribution only partially increased the share capital, and to the remaining extent was allocated to capital stock (agio). The director of the KIS and the WSA held that the tax deductible cost in such a situation is the nominal value of the shares of the capital company issued in exchange for the contribution. The SAC rejected this view stating that since the contributor is obliged to recognise income at the market value of the object of the contribution, the company that receives the contribution may recognise a deductible cost in the same amount, less any depreciation deductions.

The case was led by **Kamil Szczęsny**, **Jacek Olczyk** and **Mariusz Tkaczyk**.



## DISTRIBUTION OF PROFITS FROM A SLOVAK PARTNERSHIP BY THE END OF 2014. WITH NO TAXATION IN POLAND

We successfully concluded tax proceedings concerning the taxation of a 2014 profit distribution to a client from a Slovak partnership. The decision discontinuing the proceedings was issued on the basis of substantive regulations. In the final ruling, the head of the customs and tax office found that, as the law stood in 2014, the provisions of the Polish-Slovak double taxation treaty clearly indicate that a profit distribution from a Slovak partnership is not taxable in Poland. The authority considered that the tax authorities can, in principle, challenge the tax consequences of actions deemed to be an artificial construction that abuses the law, inter alia by referring to the general principle of EU law prohibiting the abuse of EU law. In the end, in our case, the EU law regulations did not apply, but the indicated view should be regarded as worrying to say the least. It allows tax authorities to use the abuse of rights construct as a kind of substitute for a general anti-avoidance clause.

The case was managed by **Jacek Olczyk** and **Mariusz Tkaczyk**.

With best wishes  
from the GWW team

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