

Cracow, April ....., 2021

Our ref. no.:  
POPDOW/KR/60549311/21/....

State Water Holding  
Polish Waters  
Regional Water Management Authority  
in Cracow  
22. Marszałka J. Piłsudskiego Street  
31-109 Cracow  
represented by the proxy  
Barbara Chammas

**RE: note dated 02/31/2021, ref. no.: GN/4704/717/2021, provided within the framework of public consultations for the Draft LA&RAP for the Works Contract 3A.5 – *Development of a flood gate at the left flood embankment in the area of water intakes for the Sendzimira Steel Mill in Cracow***

Acting in the name of the State Treasury represented by the State Water Holding Polish Waters, operating through the Regional Water Management Authority in Cracow (based upon a power of attorney), I hereby provide answers to questions asked by you during the public consultations for the Draft Land Acquisition and Settlement Action Plan (LA&RAP) for the Works Contract 3A.5 – *Development of a flood gate at the left flood embankment in the area of water intakes for the Sendzimira Steel Mill in Cracow.*

Ad. 1

Within the implementation framework for the *Works Contract 3A.5 – Development of a flood gate at the left flood embankment in the area of water intakes for the Sendzimira Steel Mill in Cracow*, for the purpose of minimizing the impact, permanent restriction in the use was limited, and finally Contract 3A.5 covers only one property indicated by the company, i.e. plot no. ..., area no. ..., register unit – Nowa Huta.

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Regional Court in Warsaw, XIII Business Department, NCR no.: KRS 0000035426, Share capital PLN 10 000 000, VAT no.: 7830000292

We simultaneously inform that within the framework of other Works Contracts implemented by SWH PW RZGW in Cracow other 3 properties indicated in your note are partially subject to the permanent restriction (PR) under the *Works Contract 3A.1 Modernization of Vistula embankments in Cracow*:

- plot no.: ..., area no.: ..., register unit NH – permanent restriction in the use within the area of **605.9 m<sup>2</sup>**, where extension of the flood embankment was designed (area no.: 19.T.O).
- plot no.: ..., area no.: ..., register unit NH, and plot no.: ..., area no.: ..., register unit NH:
  - ✓ Permanent restriction within the area of **614.2 m<sup>2</sup>**, where extension of an embankment culvert was designed (area no.: 9.T.O.);
  - ✓ Permanent restriction within the area of **716,4 m<sup>2</sup>**, where extension of an embankment passage was designed area no.: 10.T.O).

Ad. 2

Yes, the permanent restriction shall be associated with entering the easement to the Land and Mortgage Register kept for particular property, the use of which shall be restricted. However, the easement shall be established on behalf of the network owner/consignee, as imposed restrictions in the use are connected with development/redevelopment of the network. Technical solutions for those issues shall be regulated in conformity with arrangement/agreements with network consignees. At the moment the discussions are in progress and details referring to regulating the easement issue cannot be given. However, it may be univocally indicated that a basis for any actions shall be provisions of an issued decision on the investment project implementation permit, which shall inform restrictions and liabilities associated with those restrictions in the use.

Ad. 3

It was planned that – as a priority – establishments on the compensation amount for permanent restrictions in the use of properties shall define its amount based upon an agreement of the parties, and a basis for establishing the compensation amount shall be an estimate developed by an independent assessor acting as bespoke by the Investor and on its cost. If establishing that amount would fail, an administrative proceeding ended with issuance of a decision shall be applied, and the authorities responsible for such a procedure shall be the Małopolski Governor, who shall also issue a decision on the investment project implementation permit (IPIP).

Ad. 4

Answer to that question is positive.

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In accordance with provisions under Article 5 (1) of the Act of March 11, 2004 on Value Added Tax (OJ of 2018, item 2174, as amended), hereinafter referred to as “the Act”, the following are subject to the aforementioned taxation:

1. payable delivery of goods and payable provision of services in the area of the country;
2. export of goods;
3. import of goods in the area of the country;
4. intra-Community purchase of goods for remuneration in the area of the country;
5. intra-Community delivery of goods.

In conformity with Article 7 (1) of the Act, the delivery of goods discussed under Article 5 (1) item 1 is determined as a transfer of the right to disposition of goods as an owner.

Based upon Article 2 (6) of the Act the goods are understood as items or their parts, as well as any forms of energy.

In accordance with Article 8 (1) of the Act, the provision of services discussed under Article 5 (1) item 1 is understood as any provision to a natural person, a legal person or an organizational unit without a legal personality, which does not remain delivery of goods as given in Article 7, including also the following:

1. transfer of rights to non-material and legal values, regardless of the form the legal action was done;
2. obligation to restrain from performance of an action or from tolerating the action or situation;
3. provision of services according to an order of public authorities or a unit acting in their name or to an order resulting from the law.

The definition of “provision of services” completes the definition of “delivery of goods”, and remains an expression of implementation for the rule of VAT commonness for goods done and services provided by taxpayers under their business activities. Contents of Article 8 (1) of the Act state that a service should be understood as any provision to a given unit. The Polish Dictionary defines the verb “to provide” as “to do something for someone”, whereas “provision” remains an obligation to do something, hand something over.

Therefore, provision of services shall be understood as any behavior on behalf of another person. The behavior shall consist of both: action (performance, development of something for another person), as well as renunciation (not performing or tolerating, cancelling a determined state). The concept of services shall however exclude such a service, which contains the transfer of rights to disposition of goods as an owner to another unit. It factually remains a delivery of goods. At assessing specificity of the provision, as a service, one shall consider the

fact that the act classifies any provision, which is not the delivery of goods, as services. If we deal with provision then, in the view of the Act on VAT, it is either a service or a delivery of goods.

As a consequence, the action is subject to taxation only if it is done within the framework of obligation agreement, and one of the parties of the transaction may be deemed as a direct beneficiary of that action. Furthermore, the relation between receiving a payment and provision on behalf of the party performing the payment shall be direct and so distinct that it would be possible to state that the payment is done for that provision.

Not every action being a delivery of goods or a provision of services, as given under Article 5 of the Act, shall be subject to taxation. While analyzing the provisions given above, it shall be stated that the delivery of goods or the provision of services shall be subject to taxation only if they would be done by a unit having a status of taxpayer, and additionally operating as such in relation to a given transaction.

One of the general rules referring to VAT is the fact that actions listed under Article 5 (1) of the Act are subject to taxation, when they are done by a taxpayer.

According to Article 15 (1) of the Act, taxpayers are legal persons, organizational units without a legal personality, or natural persons running business – as discussed under Article 5 (2) – on their own, regardless of the purpose or the result of such activities.

In conformity with Article 15 (2) of the Act, a business comprises any activities of: producers; tradesmen; or service-providers, including units extracting natural resources and farmers; as well as activities of free-lancers. Business especially comprises activities consisting of the use of goods or non-material and legal values in a continuous manner for income purposes.

To sum up:

**The compensation (cash payment) received in fact remains remuneration for a service provided by the Owner, which gives the payer distinct and direct benefits in a form of possible application of the Property. Regardless of terminology applied, the granted compensation in reality remains remuneration for the service provided.**

**Therefore, the Owner – while providing services, as ordered by the public authorities, based upon a decision allowing another unit for application of the Property due to permanent foundation of transfer facilities within its area – provides services within the framework of activities discussed under Article 15 (2) of the Act as a taxpayer, defined in Article 15 (1) of the Act, which due to their payable specificity are subject – based upon**

**Article 5 (1) due to Article 8 (1) item 3 of the Act – to VAT taxation as payable provision of services**

Ad. 5

There shall be no interference to the drainage collector or to the discharge of that water to the receiver under the Works Contract 3A.5. The outlet shall not be a subject of redevelopment, and only a slope around the outlet in question shall be reinforced to secure its stability and protection against potential washing-out.

Yours sincerely,

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