

FLASH REPORT

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Court practice moving towards substance over form

The Supreme Administrative Court of Ukraine has requested that the local administrative courts consider an April 2007 Supreme Court Decision.

According to the Supreme Court's Decision, the tax authorities have applied the concept of tax law abuse.

The Supreme Court's Decision did not comment on the right of the tax authorities to apply the concept of tax law abuse. However, the Supreme Court suggested that, if a company's activity is primarily aimed at retrieving state funds in the form of a VAT refund, it could be grounds to refuse the VAT refund, even if the whole process is appropriately documented and organised.

While it's unclear whether such approach will be applied in future, taxpayers should be aware of the tax authorities new substance over form approach.

(Letter of Supreme Administrative Court of Ukraine of 4 February 2008 #190/1/13-08; Decision of Supreme Court of Ukraine of 24 April 2007 #07/92)

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