

# The building must be built

## I. Since there was no construction process, it was not a building but a technical device

In the judgement of the Voivodeship Administrative Court (VAC) in Gdańsk of 17 October 2023 (case file ref. no. I SA/Gd 550/23) that made the headlines in January 2024, the Court found that a storage tank that cannot be considered a building structure referred to in Article 1a(1)(2) of the Act of 12 January 1991 on Local Taxes and Fees as it does not meet the definition of a building structure provided for in Article 3(1) of the Act of 7 July 1994 - Building Law since it was not constructed using building products as part of a construction process. The purpose of producing the station is not to have it built-in permanently in a building structure. Therefore, it cannot be assumed that it constitutes a building product. The refuelling station with accompanying infrastructure, as follows from the application, was not built as part of the construction process using building products but was manufactured outside the development area and transported to the site to be placed on a hardened surface. It is, therefore, a technical device and not a separate building. In this respect, the authority's assessment that it is a building is incorrect. The refuelling station and associated infrastructure were not built using building products. Therefore, they will remain outside the scope of this tax.

## II. The building must be erected in a construction process

The judgment of the Voivodeship Administrative Court in Gdańsk is not the first judgment of a VAC in which the courts took a position favourable for taxpayers. Previously, a similar interpretation was adopted by the Voivodeship Administrative Court in Łódź in its ruling of 6 April 2023 (I SA/Łd 155/23). It stated that the so-called tank silos that are finished products, manufactured from acid-resistant steel outside the plant, set up in a process that does not involve the construction of a structure in a construction process and does not involve the use of building materials - do not meet the definition of a building because they were not erected in a construction process. As emphasised by the VAC in Łódź, the definition of a building structure expressed in the regulations with the words "erected using building products" assumes both that the building structure must be made of building materials and that it is to be erected, which means execution as part of a construction process, because it is difficult to imagine erecting a building otherwise.

Structures that were not constructed using building products, but rather were produced outside the development area, as part of a production process, and only transported to the destination do not meet the criteria of a building structure and, therefore, the subject of property taxation - according to the latest rulings of the Voivodeship Administrative Courts.





### III. If there is no building structure, there is no building created

In its ruling of October 2023, the court emphasised that, in accordance with applicable regulations, a building structure is a building, structure or small architecture object, together with installations ensuring the possibility of using the object in accordance with its intended purpose, erected using building products. Having analysed the regulations, the court came to the conclusion that the disputed devices (refuelling stations) are not building structures and, therefore, they are not structures within the meaning of the Act on Local Taxes and Fees. These devices are also not construction devices associated with a building structure. The lack of features of a building structure specified in the regulations excludes the possibility of identifying the object assessed for property tax purposes.

### IV. The description of the factual status must be carefully analysed

In the context of the judgement of the Voivodeship Administrative Court in Gdańsk, attention must be brought to the description of disputed devices. As the court emphasised, from the perspective of the Act on Local Taxes and Fees, a gas station is most often a complex of building structures, which may include a building, underground storage tanks for liquid fuels, underground and above-ground liquid gas tanks, liquid fuel and liquid gas dispensers, plumbing and power installations, driveways and roofs as well as other service equipment and auxiliary rooms. Meanwhile, in the case under consideration, the vehicle refuelling station consists only of a storage tank, a pump and piping. It is placed entirely on one common steel frame. It is not permanently attached to the ground, and it is possible to change the location of the entire station. The space has not been separated by building partitions, it has no roof or foundations. The design does not include any elements connecting it to the ground.





## V. Supreme Administrative Court: not only building products can be used for production

It must be emphasised that earlier the Supreme Administrative Court (SAC) found that the phrase "using building products" used in the definition of a building structure means that elements other than building products may also be used to produce a building structure. Therefore, it is not necessary for the building to be constructed exclusively using building products (see resolution of the panel of seven judges of the Supreme Administrative Court of 29 September 2021, III FPS 1/21). In turn, "building products" are - as emphasised in one of other judgments of the Supreme Administrative Court - processed building materials used in full or in part for the erection of building structures as well as their renovation or modernisation, through their permanent use in such an object. Therefore, buildings products include such metal products as pipes, sheets of steel and other materials, sections, etc.



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## VI. Practical significance of the position of administrative courts

Decisions of administrative courts on the analysed issue that are increasingly favourable to taxpayers make it possible not only to reduce the property tax burden on an ongoing basis but may also serve as a basis for taxpayers to submit overpayment applications. The invoked case law does not refer to any changes in tax law provisions, but to the correct interpretation of the existing property tax regulations. Of course, such activities must be preceded by an analysis of the extent to which industrial equipment is the result of a construction process "using building products". Both in this respect and in the scope of proper declaration and filing of overpayment applications, BDO Polska experts can help you.

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