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## Donation for a partnership – adverse change

### Tax Alert

Dear Readers,

**In today's Tax Alert we would like to inform you about the effects in income tax that may be caused by the introduction of one's own assets into a partnership, e.g. a registered or limited partnership. The position of the Minister of Finance on this issue has changed recently.**

In practice, the situation when partners – who operate a business in the form of a partnership – use their private assets is quite frequent. This concerns inter alia real estate, fixed assets or trademarks. After some time, partners decide to contribute these assets to the partnership by way of donation.

Until now, the transfer of one's own assets by way of donation to partnerships was transparent, i.e. it had no tax effects in personal income tax of the partner – the donor. It should be emphasised that a partnership has no capacity in terms of personal income tax, and its income is taxed directly at its partners. By contributing his/her own assets to the company, the taxpayer did not pay personal income tax as, according to the settled case-law, one cannot impose tax on the benefit received from oneself. And partners in partnership were obliged to pay personal income tax on the value of the donation received by the partnership in proportion corresponding to their shares in the profit of the partnership.

Recently, tax authorities have been changing the approach to this issue and issuing tax interpretations unfavourable for taxpayers. At present, the contributed donation may constitute income for a partnership. According to the interpretation of the Minister of Finance of 14 November 2016 No. DD9.8220.2.217.2016.JQP.SKT, a donation from a partner constitutes an income of the partnership, and consequently, of all its partners. In the opinion of the Minister of Finance, each partner should be attributed an income from non-agricultural business activity according to the determined proportion of profit distribution.

Change in the approach of tax authorities in relation to the introduction of private assets into a partnership is not favourable for a taxpayer. Assigning an income to a partnership, and consequently, to all its partners, results in the fact that contribution of one's own private assets will not be neutral in tax terms for partners and they will be required to pay income tax. It should be emphasised that the taxpayer is entitled to lodge an appeal against the interpretation to the administrative court. So far, administrative courts have not taken the final position in this respect yet.



Should you wish to discuss the above mentioned amendments in detail, feel free to contact us:

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