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## End of the dispute concerning the widow's mite

### Tax Alert

Dear Readers,

**On 15 May 2017, the Supreme Administrative Court, composed of seven judges, adopted a resolution ending a dispute concerning the taxation of the real property sales made before the expiry of a five-year period from the death of one of the spouses (file ref. No. II FPS 2/17).**

The dispute concerned the issue of whether in the event of the death of one of the spouses who acquired a real property to their common property a few years earlier, the other (surviving) spouse, in order to be able to sell the entire property without the obligation to pay personal income tax, is required to wait five years from the end of the year when the spouse acquired a share in the said real property through inheritance after his/her spouse (Art. 10(1)(8) of the PITA).

In the opinion of tax authorities, only a half of the real property may be sold in such a situation without tax. To sell the other half acquired after the death of the spouse, it is required to wait another five years, counting from the end of the year when the spouse died. Otherwise, it will be mandatory to pay 19% tax, unless the money from the sales will be earmarked for own residential purposes (Art. 21(1)(131) in connection with Art. 21 (25) of the PITA).

The case law on these matters was inconsistent. Some judges passed adjudications positive for taxable persons by claiming that joint marital property is indivisible, there are no shares therein and upon the acquisition of the real property to the joint property, each spouse acquires it in its entirety. Therefore, the date of acquisition should be counted from the date of the joint purchase or construction of the real property. That was the decision of, inter alia, the Provincial Administrative Court in Szczecin in the judgement of 17 February 2016 (file ref. No. I SA/Sz 1274/15), the Provincial Administrative Court in Bydgoszcz in the judgement of 24 May 2015 (file ref. No. I SA/Bd 55/15), as well as of the Provincial Administrative Court in Gdańsk in the judgement of 9 September 2014 (file ref. No. I SA/Gd 716/14). At the same time, however, some decisions of administrative courts indicated that joint property exists as long as both spouses are alive. And after the death of one of them, it is transformed into equal shares, and, consequently, at this moment, the surviving spouse acquires a half of the real property again. That, as a result, should lead to a different method of charging personal income tax due to the sale of real property in the part acquired during the marriage and the one that was acquired through inheritance. Such a position was presented, inter alia, by the Supreme Administrative Court in its judgement of 27 January 2016 (file ref. No. II FSK 2319/13) and in its judgement of 19 May 2016 (file ref. No. II FSK 1065/14).

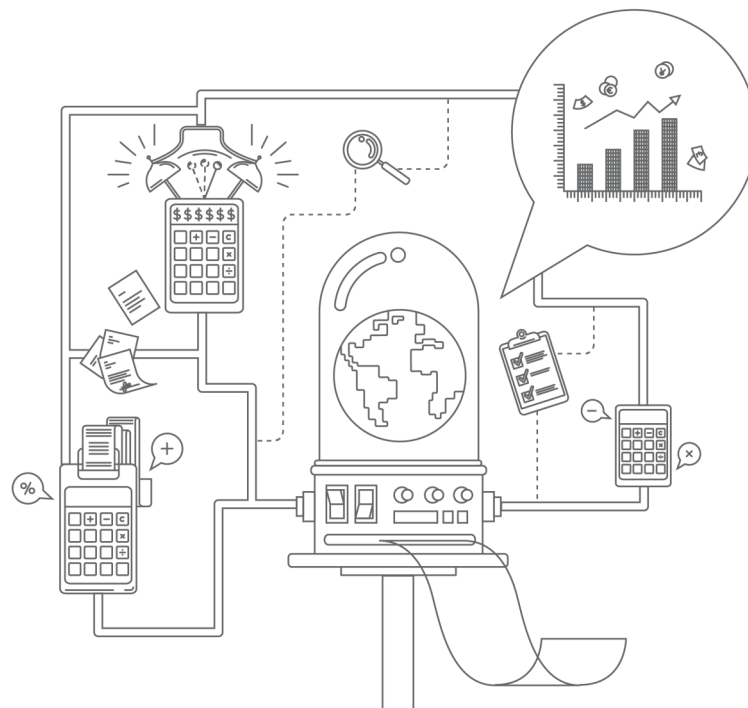
The resolution passed on 15 May this year settled the said dispute in favour of taxable persons. **In the opinion of the Supreme Administrative Court, the inheritance by a spouse of a share in the real property does not result in the repeated acquisition. Thus, the five-year time limit should be counted from the end of the year in which the spouses jointly purchased or constructed the real property.**

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

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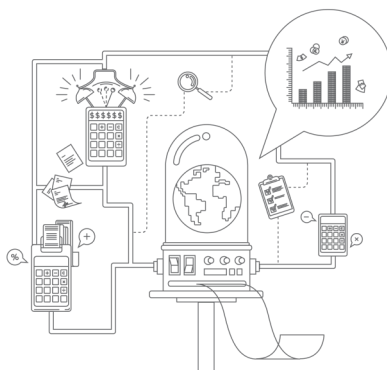
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