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## The inability to collect an advance personal income tax payment and the obligation of its payment by a payer

### Tax Alert

Dear Readers,

**The employer is not obliged to make advance payment for the tax concerning income in the form of benefits in kind for a former employee if, for reasons beyond the employer's control, the advance payment cannot be charged – confirmed the Director of the Tax Chamber in Katowice in an individual interpretation issued on 15 September 2016, file ref. No. IBPB-2-1/4511-324/16-1/BJ.**

Based on Article 31 of the Personal Income Tax Act (hereinafter: PITA), taxpayers are required to calculate and collect advance income tax payments from persons who receive income from employment. According to Article 38 Section 1 of PITA, taxpayers referred to in Article 31 and Articles 33-35, subject to Section 2 and 2a, are to submit the amount of the collected advance tax payments no later than on the 20th day of the month following the month in which advance payments were collected, to the bank account of the tax office.

An employer, who mistakenly calculated the income of an employee in a given month due to the fact that the value of benefits in kind made available to the employee was not included in the employee's income, submitted the question to the Tax Office in Katowice. In view of the situation, the company adjusted the employee's income, but after the termination of his employment. The employer stated that in such a situation he is not able to fully perform his payer's duty under Article 31 of PITA, since in connection with the termination of the employment and, as a consequence, the lack of the taxpayer's income in the form of cash, the employer is not able to deduct the advance personal income tax payment.

The tax authority agreed, indicating that according to the PITA provisions referred to, a payer is obliged to calculate and collect the advance payment. However, there are no grounds to argue that the payer, who has no actual possibility to collect the advance payment, as happens in the situation described above, is obliged to pay an advance payment from his own resources and then seek their return from a former employee. Such an obligation neither arises from other provisions of the Act. The provisions of the Act also do not oblige the former employee to pay the outstanding advance tax payment to his payer. Therefore, if there are no grounds to collect an advance income tax payment, there are also no grounds (considering the provisions of Article 38 Section 1 of the above mentioned Act) to make the payment to appropriate tax office. Thus, the Applicant is not required to pay the resulting advance payment due, either from his own funds or from the funds transmitted to him by an employee – summed up the tax authority. Additionally, it was pointed out that in such a situation the payer, in the light of Article 39 Section 1 of PITA, is required to indicate in the annual PIT-11 form the value of the income from benefits in kind, but the amount of the resulting advance payment made entered in the form should be "0". The former employee, in turn, shall be obliged to include this income in

the annual tax return submitted to the tax office, and from the sum of the income earned in a given fiscal year the income tax due should be calculated.

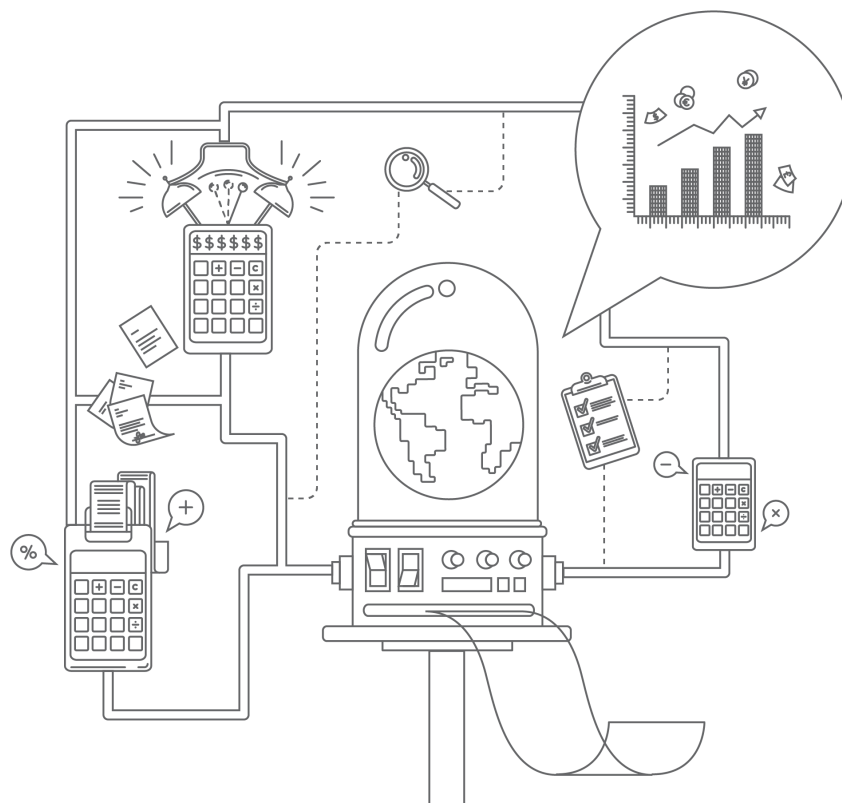
The individual interpretation in question may serve as a valuable tip on fulfilling the payer's obligations. It is worth noting that the concerns in this area have already been settled by the Minister of Finance in the amendments to individual interpretations of 8 June 2012, file ref. No. DD3/033/140/IMD/10/PK-424 and of 20 July 2012, file ref. No. DD3/033/67/IMD/12/PK-1270, in which it was stated that it does not arise from the Personal Income Tax Act that *the payer who has no actual possibility to deduct the advance payment since in a given month the taxpayer did not receive any income in the form of money, is obliged to make the advance payment from his own resources, and then seek reimbursement from the employee, and in addition the Act does not oblige the employee to make the appropriate advance income tax payment to his payer.*

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

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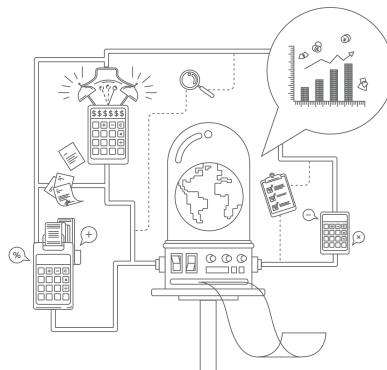
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28.10.2016



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