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## Change in the taxation of contributions in kind – amendment of the PIT Act and the CIT Act

On 22 July 2016, the Polish Parliament passed a law on the amendment of the Personal Income Tax Act and the Corporate Income Tax Act. As of 1 January 2017, the new regulations are to change the principles of determination of income in the case of non-cash contributions to capital companies.

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According to the applicable regulations, contributions in kind to capital companies result in the generation of revenue for the contributing entity, in the amount of the nominal value of the acquired shares. As of 1 January 2017, **this revenue will be determined in the amount of the market value of the non-cash contribution.**

### How is it now?

Pursuant to applicable Article 17(1)(9) of the PIT Act and Article 12(1)(7) of the CIT Act, in the case of contributions to capital companies in the form other than an enterprise or an organised part thereof, **revenue is generated on the side of the contributing entity, determined in the amount of the nominal value of the shares/stocks** obtained in exchange for the non-cash contribution. The regulations pertaining to the determination of the revenue from paid disposal of items of property rights, and to the possibility to evaluate the revenue by tax authorities, are applied accordingly.

For years, the taxpayers have argued with the tax authorities regarding the possibility for the authorities to estimate the amount of the revenue from non-cash contributions, especially in the case of the so-called contributions with *agio*. This applies to the situation when a taxpayer making a contribution receives shares/stocks with the nominal value lower than the value of the contribution, and the excess value of the contribution, above the nominal value of the shares/stocks obtained in exchange for the contribution, is allocated to the supplementary capital.

This dispute led to a judgment, passed by the Supreme Administrative Court composed of a panel of 7 judges (judgment of 20 July 2015, Case Ref. No II FSK 1772/13), in which the court concluded that the tax authorities could not estimate the value of the revenue in the amount equivalent to the nominal value of the shares, also when this value was different than the market value of the contributed item. This judgment resulted in a changed approach of the tax authorities (e.g. individual interpretation of the Director of the Tax Chamber in Warsaw of 6 April 2016, Case Ref. No IPPB3/4510-162/16-3/MS). Therefore, it seemed that the disputes were resolved, and that the taxpayers could make contributions with *agio* without fear.

## Amendment of the regulations as of 1 January 2017

However, the legislator decided to change the wording of Article 17(1)(9) of the PIT Act and Article 12(1)(7) of the CIT Act.

Pursuant to the draft article 17(1)(9) of the PIT Act and Article 12(1)(7) of the CIT Act, the revenue also includes **the value of the contribution specified in the company memorandum or articles of association**, and in their absence, the value of the contribution defined in another document of similar nature – in the case of non-cash contributions made to the company in the form other than an enterprise or an organised part thereof; **however, if this value is lower than the market value of this contribution, or if the value of the contribution has not been defined in the company's memorandum, articles of association or another document of similar nature, the revenue is considered to be the market value of such a contribution, determined as on the day of transfer of the ownership of the subject matter of the non-cash contribution.** Article 14(2) of the CIT Act and Article 19(3) of the PIT Act – referring to the estimation of the revenue by tax authorities – apply accordingly.

As a result of the amendment to the regulations, the revenue generated from the contribution will not be associated with the nominal value of the shares/stocks acquired in exchange for the contribution, **and will be equivalent to the market value of the contributed item.** The above consequence will occur **whether or not the contribution is allocated to the share capital in its entirety, or partially to the supplementary capital (agio).** If the tax authorities have doubts as to the market value of the contributed item as stated by the taxpayer, they may evaluate the revenue of the taxpayer.

It is planned that the new regulations will come into force on 1 January 2017. Currently, the matter is being reviewed by the Senate.

Should you require further information in this matter, please contact:

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