



ABOLITION OF TAX BENEFITS FROM NON-CASH CONTRIBUTIONS

On 1st January, 2017 new regulations will enter into force, which change the rules governing taxation of non-cash contributions made to limited liability companies and joint-stock companies. According to the Ministry of Finance, the amendments to the Personal Income Tax Act and the Corporate Income Tax Act are aimed at preventing the misuse of tax optimization.

➤ Until 31.12.2016 it was beneficial:

- to make a non-cash contribution with a so called *agio* – a natural or legal person who makes the non-cash contribution to a company declares revenue in the amount of the joint nominal value of all shares taken up in exchange for the contribution.

Example: In exchange for real estate with a bookkeeping value of 100,0 thou. PLN the value of which the shareholders determined at 1,0 mil. contributed to a company, a shareholder took up shares of a joint nominal value of 200,0 thou. PLN and the surplus (*agio*) at a value of 800,0 thou. PLN was transferred to the supplementary capital. The basis for the calculation of 19% tax is the income of the shareholder at the amount of 200,0 thou. PLN, which, after subtracting the costs (of gaining that income) at the amount of 100,0 thou. PLN, constitutes a taxable profit to the amount of 100,0 thou. PLN so the tax to be paid will amount to 19.000 PLN.

➤ Due to the changes since 01.01.2017):

- the contribution of an asset in non-cash form will be treated similarly to the sale of such an asset;
- the fact that part of the contribution made is earmarked for supplementary capital does not decrease the taxation base;
- regardless of the value of shares taken up, the revenue to be declared shall be equal to the value of the whole contribution as established in the articles of a joint-stock company or in the deed of a limited liability company. The tax authorities will have the right to evaluate the (underestimated) non-cash contribution in accordance with its market value;

Example: Since 01.01.2017 the tax for the shareholder from the example above (19% of 900,0 thou. PLN) will amount to 171,0 PLN. If the tax authorities prove, that the value of the contribution (1,0 mil. PLN) has been underestimated, they will impose a tax for the higher market value on the shareholder.

➤ **Taxation of a „share exchange”**

- the legislation amendment encompasses also so called „share exchange” transactions, i.e. the tax-payer contributes shares of another company to the company as a non-cash contribution. Currently this transaction is in principle neutral from a taxation perspective under the condition that respective parameters of that exchange are adhered to. From 01.01.2017 only such “share exchange” transactions will remain tax-free, which are concluded for economically justifiable reasons, and not for tax optimization. Moreover the tax authorities will be entitled to impose taxes in accordance with the new rules, i.e. from the higher income estimated in accordance with market value.

➤ **What will remain unchanged?**

- the tax rate – 19%;
- besides:
 - cash contributions and
 - contributions in form of an enterprise or its organized part

will maintain their tax neutrality.

➤ **What to do?**

If any non-cash contribution is made to a limited liability company or joint-stock company before the end of this calendar year, it will be subject to tax in accordance with current provisions.



Zbigniew Jara
Legal Advisor, Rechtsanwalt
Managing Partner
E: zbigniew.jara@jara-law.pl



Dorota Dąbrowska
Tax Advisor
E: dorota.dabrowska@jara-law.pl

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