

Tax Alert

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The taxation of aid

Almost everyone is now trying to help refugees from Ukraine. Unfortunately, in general, tax law does not contain specific provisions in this regard. This means that any donations or other gratuitous benefits are subject to general tax rules.

A donation (of things or money) to an individual is free of inheritance and gift tax up to a total of PLN 4,902 of donations over a period of 5 years (assuming that the recipient is not related to the donor). If the donation is made to several persons (e.g. a family of four), then the free amount should be calculated for each person (4 x 4,902 PLN). The free amount applies to a donation from the same donor. So, if a group of people/companies (e.g. two sister companies) make a donation, then the tax-free amount is calculated separately for each donor (2 x PLN 4,902). As long as the free amount is not exceeded, there is no obligation to report the donation to the authority or file an inheritance and gift tax return. Even if the free amount is exceeded, the donor is not a tax remitter (the tax and reporting obligations lie solely with the donee (i.e. the beneficiary)).

The above does not apply to other gratuitous benefits covered by PIT (e.g. lending a flat, car, phone, etc.). Then, the Polish-Ukrainian double tax treaty ("DTT") applies which does not apply to inheritance and donation tax, but to PIT. It seems that potential tax revenues (actual benefits) of the taxpayer being a tax resident of Ukraine by virtue of assistance obtained in Poland (e.g. free-of-charge accommodation) may constitute "other income" under Article 21 of the DTT. As a consequence, such income should not be subject to taxation in Poland as long as the beneficiary remains a tax resident of Ukraine (here, the question is whether a person fleeing with their family from war still remains a resident of Ukraine, i.e. has the centre of their life interests in Ukraine).

In view of the above doubts, it seems important to regulate tax issues in the planned speculative law related to the war in Ukraine. This may also address the fact that currently, the donor may not deduct tax for the donations or other gratuitous benefits they offer.



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