

NOT EVERY GIFT WITHIN TAX GROUP IS TAX-NEUTRAL

This is to let you know of a recent judgement of the Supreme Administrative Court in case no. II FSK 1608/14 (judgement dated 15.06.2016) in relation to gifts between companies within tax groups.

The law allows the donor to deduct such a gift for its tax purposes but treats its value as income for the donee.

The income equals the market value of the asset gifted over. However, that does not mean that the donor's deduction may exceed the expenses incurred to acquire or produce the asset. Such a situation typically involves trademark transfers within tax groups.

This treatment, under which the deduction for the donor may not exceed the actual expenses incurred to acquire or produce the asset, rather than its market value, disrupts the neutrality of gifts within tax groups and is becoming an increasingly well-established line of authority, which is unfortunately unfriendly for taxpayers.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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