



April 2020

KPMG obtained a clearance opinion against GAAR for one of its Clients regarding the transformation of a limited liability company into a limited partnership

KPMG received a clearance opinion for one of its Clients, in which the Head of the National Revenue Administration stated that the provisions on the General Anti-Avoidance Rule (GAAR) referred to in Article 119a of the Tax Ordinance Act should not apply to the transformation of a limited liability company into a limited partnership.

Pursuant to the provisions of the Tax Ordinance Act, decisions based on Article 119a cannot be issued to an entity that obtained the clearance opinion (in the scope covered by the opinion).

Planned arrangement

The application for a clearance opinion was filed in relation to the planned transformation of a limited liability company operating within a capital group (hereinafter: "**the Company**") into a limited partnership. As a result of the transformation, the current sole shareholder of the company (being a company) will become its limited partner.

In connection with the future transformation, the Company, as a tax transparent entity, will lose its taxpayer status, and its income/loss will be attributed to its partners in accordance with Article 5 of the CIT Act.

Therefore, it will be possible to settle the limited partner's tax losses incurred in the previous tax years with the taxable income of the Company, which may result in obtaining a tax advantage within the meaning of the provisions of the Tax Ordinance Act.

GAAR provisions are not applicable

Bearing in mind the applicants' position presented in the application for the clearance opinion, the Head of the National Revenue Administration concluded that the arrangement (transformation) described in the application did not meet the statutory criteria for tax avoidance.

Despite the potential tax advantage consisting in the possibility of settling the limited partner's losses with the Company's taxable income, in the given circumstances of the case the remaining conditions listed in Article 119a of the Tax Ordinance Act are not met.

In particular, in accordance with the opinion issued, the arrangement is not put into place for the main purpose or one of the main purposes of obtaining a tax advantage and the tax advantage described in the application does not conflict with the subject or purpose of applicable tax law or its provisions, and the manner of performing the transformation is not artificial.

As a consequence, the Head of the National Revenue Administration concluded that Article 119a of the Tax Ordinance Act should not apply to the tax advantage resulting from the transformation described in the application.

In the light of the above, the clearance opinion has been issued.

How can KPMG assist you?

KPMG offers support in the preparation of applications for clearance opinions and in the development of reorganization structures.

If you are interested in reorganization measures that may allow for the improvement of the liquidity management process in your capital group, which is essential in the current situation, please contact us.

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