

PUBLICATION

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DE-MERGER OF PARTNERSHIPS: GERMAN FEDERAL MINISTRY OF FINANCE COMMENTS ON MATERIAL ASSET COMPENSATION

As a reaction to the German Federal Tax Court ruling of 17 September 2015 (reference number III R 49/13), on 20 December 2016 the German Federal Ministry of Finance published a new administrative decree concerning the de-merger of partnerships, a restructuring opportunity under German tax law.

De-merger, or "Realteilung" thereby means a de facto splitting of assets between the former partners of a partnership without disclosing hidden reserves. In the new decree of the German Federal Ministry of Finance takes a position on the so-called asset compensation in kind: this is a scenario where a shareholder who leaves the partnership receives a material asset compensation in kind, i.e. in form of a separate operational unit of the business, while the remaining part of the partnership continues to stay in business. In its decision dated 17 September 2015, the German Federal Tax Court ruled for the first time that a scenario like this qualifies for the tax-neutral restructuring opportunity for partnerships.

Previously, the Court had taken the position that a tax-neutral de-merger of partnerships required, according to civil law, the termination of the partnership. If the partnership was continued by the remaining shareholders, the restructuring did not qualify for tax neutrality. Now, the Court abstains from this condition and interprets the term autonomously in the way outlined above.

Besides, the new decree also comments on de-mergers of partnerships which include both a compensation in kind and a top-up payment. This describes a situation where a shareholder makes a compensation payment to another shareholder because he receives an asset compensation, and the market value of such asset compensation exceeds the shareholder's proportion of the overall partnership's assets' value. This additional payment shall be considered a taxable capital gain in the amount of the compensation payment reduced by the pro rata book value attributable to the shareholder who is deemed to have sold (part of) his assets.