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wts TAX LEGAL CONSULTING

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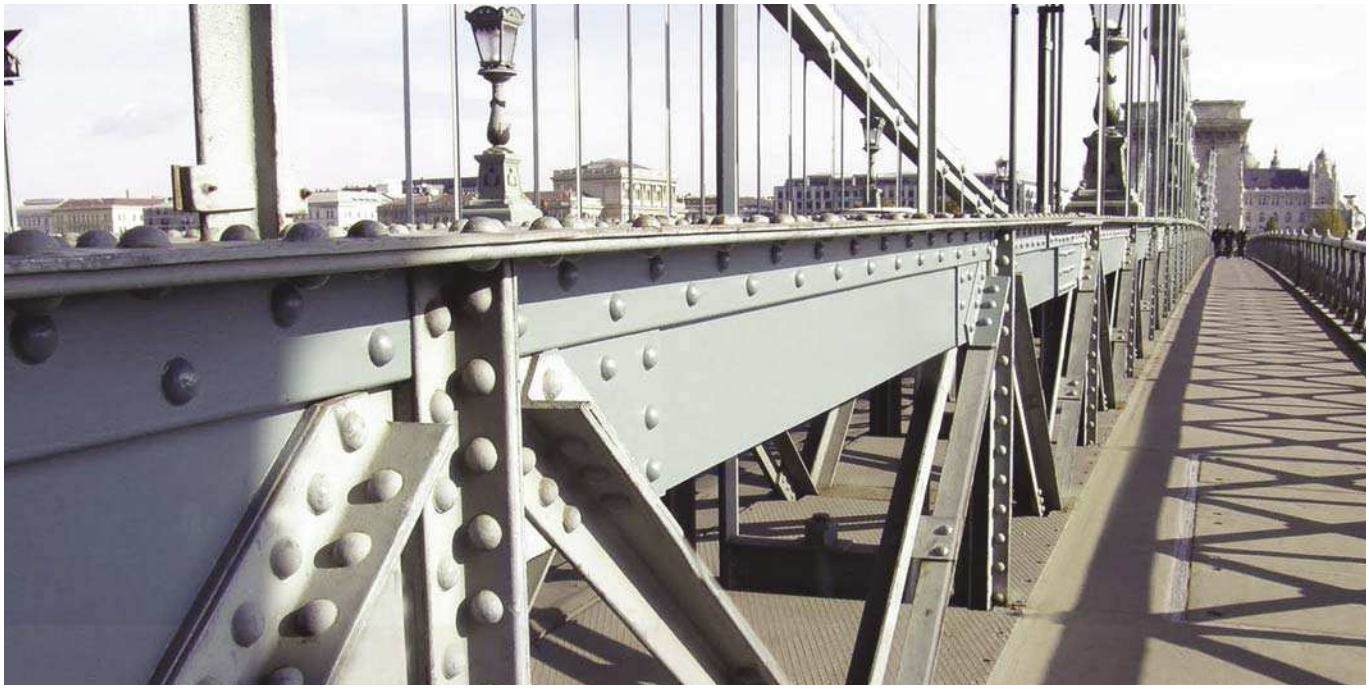

highlights

Environmental product charge – Of all the legal regulations applicable from 1 January 2013, perhaps the most important is the change in jurisdiction within the National Tax and Customs Office system and the transitional rules in this respect regarding product charge obligations.

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Transitional rules in environmental product charge regulation

change in jurisdiction

Similar to the majority of economic laws, the product charge law changes from year to year, and 2013 is no exception. Of all the legal regulations applicable from 1 January 2013, perhaps the most important is the change in jurisdiction within the National Tax and Customs Office (NAV) system and the transitional rules in this respect regarding product charge obligations (tax returns, declarations, payments).

From 2013 all of the taxation administration connected to the environmental product charge is carried out by the national tax authority. However, the customs authority that previously oversaw these tasks is still responsible for the official tasks related to waste produced from products subject to the environmental product charge.

product charge from 15 February 2013: to the tax authority

According to the transitional rules, missed product charge returns and self-revisions relating to the period prior to 1 January 2013 must be submitted to the customs authority by 14 February 2013. The registration and any correction tasks related to these returns are therefore carried out by the customs authority. From 15 February 2013, however, returns related to previous periods must be submitted to the tax authority. The tax authority will also handle ex post inspections and pre-remittance reviews of product charge returns from 1 January 2013.

This change in authority does not cause any problems in terms of meeting product charge payment obligations, as the previous account numbers remain the same.

1 January is now the date for product-charge registrations as opposed to 14 February. The customs authority is still responsible for matters which arose before 1 January. Thereafter, however, these tasks will be carried out by the tax authority, and a separate form (13TKORNY) has been created for taxpayers to meet their registration obligations. It is important to note here that taxpayers who met their registration and declaration obligations prior to 2013 do not have to repeat their registration on form 13TKORNY – provided there have been no changes in their liability.

VPID number does not have to be indicated

Another new feature is that the VPID number does not have to be indicated either on the 13TKORNY registration form or on the new product charge returns. This is because taxpayers subject to the product charge are registered at the tax authority based on their tax numbers.

From 1 January 2013, representatives must be notified on form 13VAMO, but representatives for electronic administration must be notified using form 13T180. Representatives who are entitled to take care of a tax matter based on a previous registration, or who have permanent, all-round authorisation, do not have to register again at the tax authority purely on account of the change in the product charge regulation. This is because the details of previously registered representatives will automatically be transferred from the customs authority to the tax authority.

Following the transfer of data between these two bodies, items related to the product charge can be queried on taxpayers' tax current accounts.

Solvent liquidation in practice

Recently there has been an increase in the number of companies voluntarily opting to wind up their operations in Hungary compared to previous years. While the company is sometimes not deleted completely in the hope it may be resurrected in the future, practice shows that most of the time this is the outcome: the company is wound up in a solvent liquidation procedure. This unfortunate trend means we would like to shed light on some of the practical issues surrounding a solvent liquidation.

A good number of quality professional publications have already dealt with the legal background to solvent liquidations. The tax authority has also prepared summaries for taxpayers on the main tasks and deadlines in these laws. Yet practice shows that alongside profound knowledge of the legislation it is often very useful to have practical experience to conduct and complete a solvent liquidation successfully.

Prior to launching an insolvent liquidation it is worthwhile giving some serious thought to a few decisions. If the receiver is the former managing director of a foreign company then you have to take into account the longer period of time it will take to have documents signed, for technical reasons. Aside from the time factor, we cannot ignore liability either, as according to the latest legislation, default penalties in the course of insolvent liquidations are sometimes levied on the receiver, as a private individual. During preparations it is also advisable to assess whether the company must be audited. If not, it should be considered whether the owners insist on an audit or not. Assuming that the company was not conducting any business activity when the solvent liquidation began, and in an ideal situation any outstanding items are not significant, cancelling the audit could be justified as the deadlines set by the law are essentially impossible to meet if an audit also has to be included. It is also important for there to be no issues with the company's capital and for its financial assets to cover all liabilities expected over the term of the solvent liquidation. A new financial year begins for the company when the solvent liquidation starts. If there is a prospect of forgiving receivables/liabilities or receiving/transferring assets free of charge then it is advisable to reflect on which reporting period these should be performed in, based on the rules in place for utilising loss carry forwards. The company must be prepared for tax inspections as these are compulsory during a solvent liquidation.

to be prepared for tax inspection

During the proceedings there must be close cooperation between those in charge of accounting and taxation areas to meet all the obligations set forth in the law. One such example here is that an original copy of the report closing the solvent liquidation must be sent to the tax authority, where personnel review all the documents prepared during the final inspection (final report, proposal on the appropriation of assets, etc.). When completing the solvent liquidation it must be examined whether the company has met all of its tax return obligations. Although many of these returns contain no data, failing to submit them incurs penalties and this can prolong the whole procedure. It is important that any tax overpayments be settled and for the report closing the solvent liquidation to contain as few positions as possible. It is advisable to keep the company's bank account open at least until deletion from the company records and until the remittance of tax overpayments and tax refunds, but thereafter any remainder should be transferred to the owners as soon as possible so that the whole procedure can finally be completed.

to settle tax overpayments

E-invoicing: what does the tax authority expect

One of the major changes introduced from 1 January 2013 is the simplification of the rules on electronic invoicing. Consistent with the provisions of Directive 2010/45/EU, the new rules could help companies lower costs and improve their competitiveness. The amendments are also naturally intended to prevent a further increase in the administrative burdens related to paper-based invoicing. The tax authorities of Member States have to move with the times too, and we can now say that the hegemony of paper-based documentation is coming to an end.

Aside from the compulsory content, the issue of both printed and electronic invoices must guarantee that

three conditions

1. the origin of the invoice remains credible,
2. the integrity of the data is maintained, and
3. the invoice remains legible
   (to the human eye – software capable of reading the invoice must be kept)

from the date of issue until the end of the period the invoice must be retained for.

These three conditions can be met using any business control procedure that creates a reliable control link between the invoice and the supply of the product or service.

What is not yet known is which procedures will comply with this requirement, alongside the two statutory methods listed separately in the VAT Act: invoice with a qualified electronic signature and data created and forwarded in an electronic data interchange system (EDI). These business procedures call for the required level of care and diligence from taxpayers and the proper documentation of processes in anticipation of an inspection.

Besides the invoice, the taxpayer must be able to present all other documents designed to substantiate the authenticity of the transaction, such as order forms, receipt slips, electronic materials sent by email without an error message, certificates of completion, clear identification of the contracting partner – an e-mail address alone is not enough. The purpose here is to employ information technology procedures (closed system, data preservation/archiving that may not subsequently be modified, queryable database in relation to forwarding electronic invoices) to ensure the three conditions above can be verified on both sides, and for the simplifications not to result in even more paper documents being required for verification purposes.

consent from the invoice recipient

It is important to note that consent from the invoice recipient is required for the issuance of an electronic invoice, which does not necessarily have to be in the form of prior written confirmation (acceptance and payment of the invoice signifies consent from the recipient).

Care must be taken to ensure that during tax inspections conducted in subsequent years the relevant devices and software must still be available so that the tax authority can check the existence and authenticity of the documents, even after upgrades to technology have been made.

Intra-community product supplies – certifying movements of goods – international review

In the period since Hungary joined the European Union, no clearly defined system of rules and regulations has been established for certifying intra-Community supplies of products that are not subject to VAT. The stakes are high as companies run a significant value added tax risk if they are unable to prove, to a satisfactory degree, that goods have left the territory of Hungary. So it is worthwhile taking a look at how an older member of the European Union, Germany, regulates this high tax risk area, and are they really in front of Hungary in this respect.

Hungarian cases

Case Mecsek-Gabona

Before examining the German system we should briefly "remind" ourselves of a European Court of Justice ruling concerning Hungary. In Case C-273/11 (Mecsek-Gabona) the Hungarian tax authority ruled that the Hungarian vendor should have had a document in its possession to prove that it had dispatched the goods and transported them to another Member State. Since the company was unable to present such a document during the tax inspection, and the tax authority had doubts regarding the credibility of the document it did offer, it had to pay VAT on the sale transaction in question, unless it had acted in good faith with the transaction. According to the tax authority the company should not only have gained assurance about the transportation of the goods, but also that they had arrived at their destination.

Hungarian case law

We see the same train of thought in case law of the Supreme Court. In one of its rulings the Supreme Court highlighted that the mere existence of a transportation document only corroborates the fact that the transporter received the goods from the sender. Consequently, the transportation document or other certificate must, taking all the circumstances into account, be suitable for proving, without a doubt, that the products were delivered to and arrived in another Member State. On this basis and in the case at hand, the selling company was not careful enough when it sold several hundred tons of produce without gaining assurance about the circumstances of the supply by checking the entity carrying out the transportation or by checking the authenticity of the CMR document.

EU requirements

Member States must define the terms and conditions for exemption

It also transpires from the case law of the European Court of Justice that since no provision of Directive 112/2006/EC specifically prescribes which proof taxpayers must provide to receive tax exemption, Member States themselves must define the terms and conditions for the exemption on intra-Community product supplies. This is to ensure that the tax exemptions in question are applied easily and correctly, and to prevent any tax fraud, tax avoidance and abuse. In the Mecsek-Gabona case mentioned in the introduction, the Hungarian government explained during the hearing at the Court of Justice that Hungarian legislation only specifies the sale must be verified, while the range of evidence required depends on the particular circumstances of the transaction in question. The only reference in this respect on what the tax authority would like to see as an export certificate during an inspection can be found in the rather dated yet detailed tax question 2007/41.

German legislation

We find similar uncertainties in the German system too. The amendment to the implementing regulation for the German VAT Act which took effect on 1 January 2012 introduced new rules with

special document certifying the arrival of goods

regard to documenting intra-Community supplies. If a German VAT taxpayer wants to treat its intra-Community supplies as tax-free, they require a special document issued (and signed) by the customer verifying that the goods have been received in the country of destination (Gelangensbestätigung). This new provision raised various questions and triggered significant outcry among market participants in view of the administrative burdens related to the special documentation. Under pressure from chambers of commerce, the German Finance Ministry has repeatedly set new deadlines, and for intra-Community supplies prior to the expiry of these deadlines the method of documentation applied under the previous rules must be accepted. According to the new plans, the new regulation will take effect from 1 July 2013, and will contain some concessions, based on which the document certifying the arrival of goods will not be the only certificate accepted, and the authorities will have to accept other verifying documentation too. In summarising the German situation it is clear that not even for the authorities of a Member State which has been part of the EU system for many years is it easy to find the golden mean, where the notion of tax evasion is ruled out from the start and yet companies are not hindered by administrative burdens.

What to do

set up an internal administration system

So it is highly recommended that Hungarian companies set up an internal administration system which demonstrates during an inspection, clearly and convincingly, that the company acted with due care and in good faith prior to issuing the tax-free invoice. Experience shows that the more evidence companies integrate into their procedures during sales, the more relaxed they can feel when the tax inspectors come knocking on the door. Such evidence may include a legible CMR document stamped also by the customer, which contains a reference to the registration plate of the transportation vehicle and the invoice accompanying the products. In addition to conducting a thorough check of the customer's identity, and that of the person representing the customer before the first contract is signed, along with the customer's EU VAT number, it is worthwhile providing in the contracts for cases where the customer does not return the right copy of the CMR document to the vendor.

The newsletter accurately reflects the statutory provisions as they stand at the time of its issue.
The authors of the news articles have endeavoured to provide general information that both reads well and is professional. Given the general nature of the content and possible changes to legal regulations, please contact us if you require this information tailored to your personal circumstances.

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