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TAX LEGAL CONSULTING

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highlights

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Amendment proposals to the 2017 tax act, clearly and understandably for investors and the owners of foreign-owned enterprises

The proposals on the 2017 tax laws were published in early May. We have highlighted the proposals making the greatest impact on our business decisions from the amendment documents spanning over 200 pages.

According to the reasoning behind the package of proposals, the enterprise-friendly tax package is aimed at scaling back taxes and cutting red tape, but also features a number of tightening measures to prevent companies from taking advantage of loopholes. The main pillars and their core elements are:

Tax cuts

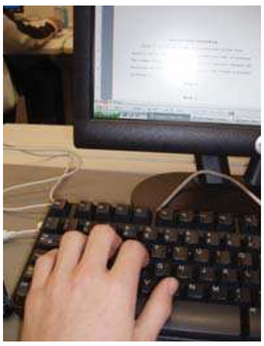
For families with two children, the tax base relief per dependent will be HUF 100,000, and VAT will be cut for certain product groups.

Cutting tax-related red tape

Automatic payment in instalments without any surcharge for certain private individuals (a simple request can be lodged instead of completing a payment alleviation request; can even be made in person at customer service locations). The simplification will allow payment in instalments over a period of up to six months free of any surcharge for private individuals not subject to VAT, with a debt of less than HUF 200,000.
For private individuals benefiting from the family allowance, the other eligible person (spouse, parent) no longer needs to present a tax advance statement on the utilisation of the allowance to his/her employer, or have it signed and stamped.

Enterprise-friendly progress

The cost reimbursement on car use for getting to work will increase from HUF 9/km to HUF 15/km. The costs of establishing and operating workers' hostels will be given preferential corporate tax treatment, alongside the housing tax allowance aimed at fostering mobility.



Fighting the shadow economy

Online invoicing: Data stated on invoices issued using invoicing software will be available in real time for the National Tax and Customs Administration (NAV), similarly to the online tills already linked to the tax authority.
The threshold for itemised VAT declarations will be reduced from HUF 1 million to HUF 100,000, and fraudulent traders transporting with overloaded small lorries will be identifiable following the amendment of the EKÁER.

Planned VAT cut:

Range of products affected by VAT cut	Reduced tax rate	Effective from
Poultry	5%	1 January 2017
Eggs	5%	1 January 2017
Fresh milk	5%	1 January 2017
Food and homemade non-alcoholic beverages sold at restaurants	18%	1 January 2017
Food and homemade non-alcoholic beverages sold at restaurants	5%	1 January 2018
Internet services	18%	1 January 2017

The devil is in the details

Besides the main proposal elements highlighted by the Ministry for National Economy, being aware of the following may also be useful:

Hungary's "Google tax"

This instrument serves to collect advertising tax from companies registered abroad that are not subject to Hungarian advertising tax. As a result, publishers/broadcasters of advertising not registered as Hungarian taxpayers may be fined with a repeatable HUF 10 million fine, rising exponentially up to even HUF 1 billion (over EUR 3 million) if they fail to meet their reporting obligation despite the tax authority's request. In addition, a tax base estimated at HUF 3 billion was also mentioned in the draft legislation, the application of which is highly questionable, while the draft, to put it lightly, is very taciturn about implementation in practice.

Personal income tax returns and earnings on capital market operations

According to the draft, investment service providers will determine the earnings on controlled capital market transactions and the ancillary costs not directly linked to the transactions, and report relevant data to the tax authority in the context of data reporting following the tax year. The amendment will enable the tax authority to include these incomes in its tax return draft in 2017, once in possession of this control data. The control data will also allow the tax authority to identify any unreported incomes in the context of audits.

Corporate tax – Tax planning, royalty-related transactions – running out of air!

To prevent tax evasion and improve the transparency of transactions, classifying transformations and asset transfers as preferred is subject to the transaction being based on actual economic or commercial reasons, which the taxpayer must prove.

For the tax base relief linked to royalties received, royalty revenues used to constitute the base for the statutory corporate tax discount, while according to the proposal, the **relief can be applied on the basis of earnings derived from royalties**, subject to additional conditions. In addition, transactions linked to royalties would be significantly "redesigned".

Corporate tax – castle renovators to benefit

As a new tax incentive, the cost of historic listed building renovations can now be deducted from the tax base, meaning that the cost can be claimed twice (once as a cost, and once as a tax base deductible).

Corporate tax – related transactions

Under the proposal and in an effort to fight fraud, for uncollectible claims from related companies taxpayers can apply the 20% deductible if, simultaneously with their tax return, they report data on the related company and the actual economic cause providing the grounds for the uncollectible claim.

When applying a deductible linked to transfer pricing, the condition for the deduction under the proposal is that the related party must declare that it will account for the difference between the applied price and the arm's length price when assessing corporate tax.

According to the treaty regulating international taxation, Hungarian branches exempt from Hungarian taxation do not have to prepare transfer pricing documentation in respect of transactions between foreign enterprises and their domestic permanent establishments.

Tax administration – Big Brother will see everything

Under the proposal, from 1 January 2017 the buyer's tax number must be stated on invoices issued to domestic taxable persons if the output tax is HUF 100,000 or more. Pursuant to the rules currently in force, this threshold is HUF 1 million.

With the introduction of online invoicing, the tax authority will be able to investigate and audit data in real time. Accordingly, invoicing software must be developed to simultaneously send the invoice data to the tax authority upon the issuance of the invoice. This automatic and electronic data reporting in real time would replace the current, retroactive, aggregate and periodic data reporting on issued invoices. The rule must be applied in cases where the output tax is HUF 100,000 or more. The taxpayer must also report real-time data on amendments or cancellations of these invoices.

The EKAER reporting obligation will also apply in future for the transport of non-risky goods with a vehicle not subject to a road toll, but with a total weight exceeding 3.5 tonnes after loading. The amendment aims to fight fraudulent taxpayer behaviour. Another amendment linked to the EKAER is that if the quantity of notified goods exceeds the actually transported quantity, the national tax and customs administration may levy a penalty of up to 40 percent of the value of the notified but not actually transported goods.

Electronic local business tax returns

According to the effective rule enshrined in the Act on Local Taxes, effective from 1 January 2017, from this date onwards, taxpayers subject to local business tax will be able to submit their local business tax returns to the competent local government through the NAV. The proposal would make it clear that taxpayers can submit their tax returns electronically to the state tax authority, and that the submission of tax returns through the NAV would also apply to the self-revision of submitted tax returns, as well as the repeated submission of corrected tax returns.

Local business tax – R&D expenses

According to the effective provisions of the Act on Local Taxes, the concept of direct costs of basic research, applied research and experimental development – as items decreasing net sales revenue – is broader than the definition used by the corporate tax and dividend tax act. The proposal would give identical meaning to the concept of direct R&D costs in local business tax and the concept of deductible items from the corporate tax base.

Company car tax – one loophole has been closed

For long-term car leasing, the long-term lessee (operator) will be the taxable person, rather than the owner according to the main rule. Pursuant to the effective regulation, there is no company car tax levied on vehicles rented out long-term by a non-private individual owner to a private individual, the private individual cannot recognise any costs, and the owner can only recognise depreciation.

Practical experience shows that in many cases, non-natural person owners registered in the vehicle register wiggle out of their status of taxable person and from paying taxes by establishing a long-term lease (operating right) for the benefit of the managing director in his/her capacity as a private individual, who does not recognise any costs related to the vehicle use.

In order to fight fraud, the proposal repeals the special rules governing long-term leases.

Lower procedural duties

The proposal makes it clear that certificates on the fulfilment of tax, customs, duty and social security obligations are not subject to any duties.

Secondments – third-country citizens

According to Hungarian legislation, third-country citizens qualifying as foreigners employed in Hungary by an unregistered foreign employer may be exempt from the insurance obligation in Hungary if the work is performed in the context of posting, secondments or temporary labour. Another condition for the exemption is that the work does not exceed two years, and that three years have elapsed from the conclusion of the previous work performed in Hungary. There is no change in that if the posting is expected to exceed two years, the insurance and contribution payment obligation applies from the first day of the posting (excluding cases where postings are extended).

Postings may be extended if a circumstance occurs that was unforeseeable at the beginning of the posting, secondment or temporary labour, based on which the work performed in Hungary foreseeably or actually exceeds two years, and this circumstance materialises at least one year after the start of work in Hungary, which the employee reports to the tax authority within eight days.

Statute of limitations

Due to judicial proceedings that often stretch on for years, it can happen in practice that taxpayers are unable to settle their past tax obligations in accordance with the court ruling because the statute of limitations on the affected tax ruling period has expired. The amendment allows (but according to the current wording of the proposal, does not impose the mandatory) submission of self-revisions, irrespective of the statute of limitations, thus also allowing the tax authority to conduct audits within one year. Taxpayers are no longer able to use self-revisions to settle their tax obligations for a period closed with an audit, so in this case the tax obligation can be corrected in the context of a repeated audit launched at the taxpayer’s request.

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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