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highlights

Guidelines for tax authority inspections in 2013 - The National Tax and Customs Administration has published its main tax inspection objectives for 2013, the main activities it will be targeting and the selection criteria for inspections in Bulletin No. 4001/2013. Let's take a look at which companies are "at risk" and have a greater chance of being inspected during the 2013 fiscal year.

Guidelines for tax authority inspections in 2013 – is my business at risk?

The National Tax and Customs Administration has published its main tax inspection objectives for 2013, the main activities it will be targeting and the selection criteria for inspections in Bulletin No. 4001/2013. Let's take a look at which companies are "at risk" and have a greater chance of being inspected during the 2013 fiscal year.

In contrast to previous practice, more inspections are expected in relation to the taxes which were transferred from the customs authority to the tax authority from 1 January 2013, such as the environmental product charge, energy tax and the public health product tax.

Being selected for an inspection is particularly justified in the following cases when companies are established:

» If the foreign managing director of the company does not have a Hungarian-registered address, and only information on the agent for service is registered.
» If following the establishment of the company (with a rather low amount of registered capital) there is significant turnover or a high level of VAT payable coupled with an almost identical amount of VAT deductible.

The main risk factors following the establishment of a company include, but are not restricted to, the following:

» Frequent change of registered office, jurisdiction and owner.
» Companies hiring a large number of workers from a temporary staffing company.
» Companies operating in labour-intensive sectors without any or an inadequate number of employees, reducing VAT to a minimum.
» Tax returns which regularly include high amounts of turnover and expenses on a par with income (minimising tax).
» Companies largely involved in transfers in trade with enterprises in European Union Member States, where there are significant VIES discrepancies in terms of amount and in relation to turnover.
» Use of de minimis and EU aid.

pricing between related companies

For the tax authority, pricing between related companies also harbours a significant risk, especially if one of the companies constantly makes a loss because of the transactions. When examining corporate tax the tax authority will focus closely on the company if it records extraordinary amortisation and depreciation on its intangible or tangible assets, or significant impairment on receivables, inventories, securities and investments representing ownership shares. Attention will also be paid to examining application of the new rules on loss carry forwards.

reducing innovation contribution liabilities

In light of the unlawful taxpayer practices identified in connection with reducing innovation contribution liabilities, the tax authority will continue inspections aimed at collecting data among those preparing studies, which later could have a significant impact on those reducing their innovation contribution liabilities based on such studies.

The information from the tax authority also reveals that *"providing information and encouraging prevention will be the approach taken for taxpayers willing to follow tax laws, and this shall be applied in the event of taxpayers committing minor infringements or where the potential for tax implications is lower."* This message is certainly a positive development, and such an official position from the tax authority should be borne in mind during tax inspections. However, the information also highlights that the *"use of publicly available data during risk analyses will grow as the volume of data and information on the internet increases"*. This demonstrates that marketing information from companies or community news will no longer just be of interest to potential customers and business partners (and presumably demoralising for rivals), it will also be available for tax inspectors to browse through.

Tasks relating to annual close

Most enterprises have already closed their books for the previous year, but many are still to complete this task. Closing the year not only means preparing the balance sheet, there are also many other related tasks for enterprises, some of which we would like to bring to your attention.

deadline for publishing financial statements: 31 May

31 May of the year following the financial year is the deadline for publishing financial statements at companies whose financial year is the calendar year. Companies may naturally choose an earlier deadline for closing their books than the statutory deadline, and all such issues are stipulated in the accounting policies. There are other deadlines related to the publication of financial statements; managers and owners must make decisions in many areas and so it is important that they actively participate in the annual close. After closing the accounts, the authorised signatories of the company sign the financial reports and submit them to the general meeting for approval. The owners of the company make the decision on dividends. If the company has been running a loss for several years, the owners are responsible for replenishing capital. The methods for doing so can be determined by the legal representatives of the enterprises based on their articles of association and applicable legal regulations for the given type of enterprise. Approved financial reports are published online. Companies that fail to publish them may be fined up to HUF 1 million.

annual tax returns

determine advance tax

minimum tax

Annual tax returns are filed together with the publication of the financial statements; advance tax payments for future periods are determined based on the tax returns. It is important that these advance payments can be made even if a company's business performance declines, therefore it is advisable to consider the appropriateness of the advance payment amounts carefully in view of forecasts. If a decline is likely, the company may request that the advance payments be lowered. Of course, the tax authority may impose subsequent fines if advance payments are lowered unjustifiably. If the tax base of the company or the profit before tax (whichever is higher) is less than the statutory minimum amount, the company can decide between paying the prescribed tax amount or declaring the items stipulated by the tax authority. Experience shows that the tax authority continues to check every enterprise that does not pay the so-called "minimum tax". All accounting documents may be checked during such an inspection, but the inspection does not signify the end of period closed by an audit. Apart from accounting documents, internal policies are also checked, including the accounting policies and transfer pricing rules. All enterprises except for small businesses must determine transfer pricing rules if there are any transactions in the tax year completed based on a contract with related companies as stipulated by law. In the event prices other than market prices are used, the corporate tax base may have to be adjusted and the transfer pricing record must be prepared before filing the corporate tax return for the same year. It may be necessary to involve tax advisers when preparing the documentation. Failure to keep records may result in default penalties up to HUF 2 million per record (up to HUF 4 million in the event of repeated violations).

Apart from the afore-mentioned rules, enterprises may face other tasks based on either legal regulations or internal group rules, and this can result in further obligations.

No reverse charging in the live pig, half-carcass and fodder industry

According to a statement dated 2 April from the State Secretariat for Tax and Financial Regulation of the Ministry of National Economy, reverse charging could have been applied to the sale of live pigs, half-carcasses and fodder.

However, the introduction of this measure is subject to approval by the European Union, and the European Commission rejected the Hungarian application for said approval on 19 March 2013. Accordingly, pursuant to a legal amendment published in Hungarian Gazette No. 54, the reverse VAT charging rules for the pig and fodder sector will not enter into force on 1 April 2013.

For these products, the vendor taxpayer must still charge VAT on sales, while the administrative obligations associated with reverse charging will not take effect either. The earlier legal amendment defined the products precisely, stating the customs tariff codes (e.g. full or half domestic pig carcasses, animal fodder, except for dog and cat food). Thus, contrary to the reverse charging applicable from 1 July 2012 for certain types of cereals, reverse taxation will not be introduced in this sector (the obvious purpose of reverse charging would have been to fight VAT fraud caused by the high VAT rate).

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