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highlights

Croatia's EU accession – The European Union welcomes a new member from 1 July 2013, Croatia. Below we have listed a few pieces of practical information that are worthwhile keeping in mind when examining transactions involving Croatia.

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Croatia's EU accession

The European Union welcomes a new member from 1 July 2013, Croatia. Below we have listed a few pieces of practical information that are worthwhile keeping in mind when examining transactions involving Croatia.

check Croatian EU VAT numbers

EU VAT numbers will become available after accession (HR country code followed by an 11-digit tax number). It is crucial to check the validity of Croatian business partners' tax numbers and include them in summary reports during intra-EU transactions (previously we talked of goods imports and exports from a VAT perspective). Checks can also be carried out on the following website:

http://ec.europa.eu/taxation_customs/vies/

customs procedures

Customs procedures initiated prior to accession but not yet completed must be closed in accordance with EU rules, taking into account any special customs procedural rules.

value added tax

Transitional rules must be applied for **value added tax**, specifically for special customs procedures that are pending (Section 282 of the VAT Act, which took effect from 1 July 2013).

Good to know – day-care services can be provided tax-free

There are several angles to consider when returning to work after giving birth. One of the most important aspects today is money. Both employees and employers should be aware that the cost of day-care services – which is certainly not a negligible expense – can be absorbed by employers tax-free. This information is based on the opinion published in the tax authority's official gazette.

Pursuant to Section 8.6 of Schedule 1 to the Personal Income Tax Act, the following in-kind benefits provided free of charge or at a discount shall be tax-exempt:
"a) Non-cash benefits provided to children or to another private individual in this context as governed by the Public Education Act, the Act on Child Protection and Custody Administration and the Act on Regulating the Schoolbook Market, and to students under the Public Education Act;...
c) day-care services."

It is important to point out in this case that tax exemption refers to the form of income provided by means other than money. Pursuant to the aforementioned Act, non-cash income includes, in particular, debt forgiven or absorbed; expenses, payments made on behalf of private individuals.

day-care

Characteristics of the **day-care** concept must be examined in accordance with Act XXXI of 1997 on the protection of children and the administration of guardianship and Decree 15/1998 NM on the professional tasks and operational conditions of child welfare and child protection institutions and persons providing personal care.

These institutions can be operated by governmental and non-governmental bodies (e.g. **day-care operated by an employer to provide care for employees' children**), and the rules of tax exemption do not exclude either of these categories of operators.

other staff benefits paid to private individuals

Under the Accounting Act, these benefits are classified as other staff benefits. Pursuant to the Corporate Tax and Dividend Tax Act, the amounts recognised as other staff benefits paid to private individuals employed by the taxpayer or to their close relatives, can be reported as business-related cost and expense.

can also be provided to the child's other parent

Therefore it is useful to know that employers can provide tax-exempt benefits to employees or to the child's other parent based on invoices issued to the employer. A similar regulation would probably be welcome by taxpayers regarding nursery and school services too. The tax-exemption must be documented properly in each case, given that the tax authority could conduct a detailed inspection of tax-exempt benefits.

How to pay local business tax when changing registered office during a year?

Businesses with a financial year identical to the calendar year must submit their local business tax return by 31 May in the following calendar year to the local government in whose jurisdiction they have their registered office. Frequently, a business changes its registered office during the financial year. In the case of such businesses the most important question is what amount of tax they must pay, for what period, and to which local government.

permanent business activity

Pursuant to the Act on Local Taxes, both temporary and permanent business activities are taxable within the territory of the particular local government. However, taxation must be determined using different methods for the two types. In line with the general rule set forth in the Act, the key feature of a permanent business activity is that the business has its registered office and place of business within the territory of the given local government. Coming back to our original question, i.e. what is the correct taxation procedure when changing registered office, the answer is that the taxpayer has permanent taxation liabilities in the municipalities where it has both the old and the new registered office (place of business), as specified by law, regardless of whether it pursues its activity partly or fully outside said area. According to the relevant legal regulation, the taxation liability commences on the date the local business activity commences and ceases on the date that such activity is terminated.

To have a better understanding of the regulations, let us consider a practical example, in which we took into account information for 2013 provided by the Ministry for National Economy:

A business obliged to pay local business tax in Hungary relocates its registered office to the jurisdiction of another local government as of 11 June 2013. It terminates its activity within the area of the former local government as of 10 June 2013. The business has a calendar financial year, therefore, it is obliged to submit its tax return for both registered offices by 31 May 2014 (according to the Ministry, no extra tax return must be submitted relating to the taxation liabilities of the 'terminated' registered office). Pursuant to the regulation, the business in question pursues a permanent business activity in both municipalities during 2013, therefore it must divide its tax base between the two local governments as specified in the Act (according to the Ministry, it would be unlawful to separate tax bases pro-rata for the respective local governments, e.g. based on some sort of accounting closure).

advance tax payment

As far as advance tax payments are concerned, the period for paying tax advances is the 12-month period starting from the first day of the second month following the due date for submitting the tax return, according to the basic rule. As the taxpayer is obliged to pay its 2012 local business tax based on its tax return submitted by 31 May 2013, the tax advance payment period for 2013 (the current year) is, accordingly, between 1 July 2013 and 30 June 2014. Advance tax instalments relevant to this period shall be paid by 15 September 2013 and 15 March 2014, respectively.

When changing registered office, the payment of tax advances can raise questions too. In our example, although the business no longer pursues taxable activity within the territory of the first local government, based on its earlier tax return (i.e. the return submitted by 31 May 2013, which is an executable document), the obligation to pay tax advances by September 2013 and March 2014 still exists. Based on information from the Ministry for National Economy, the tax advance declared earlier will not be annulled due to the change of registered office and the change report forms submitted in the meantime. Consequently, it might be worth asking for a reduction in the reported tax advance to avoid any unnecessary advance tax payments. The dates for advance tax payments to the second local government remain the same (15 September 2013 and 15 March 2014) as for the former registered office.

As a result, every business carefully needs to clarify the circumstances related to the change in their registered office. This means any tax shortfalls, tax penalties and default penalties established during a local tax inspection might be reduced.

Finally, in connection with the 2013 changes pertaining to local business tax please note that it might be worth separating the cost of goods sold related to export sales and mediated services because these items are fully deductible from the tax base (the new progressive tax base reduction is not applicable in this case).

Focus on the social security status of foreign employees

It is very easy to get lost in the maze of Hungary's social security system. This is especially true in cases when we, as an employer, employ a foreign private individual. We summarise the main guidelines relating to the social security status of foreign individuals as follows.

Who can be considered a foreigner (non-resident)?

resident and non-resident natural person

From the perspective of social security, every natural person who does not have to be considered a resident Hungarian national qualifies as a non-resident. This wording seems easy; all we have to consider now is who qualifies as a resident. Based on Section 4 u.) of the Act on Social Security, any person shall be considered a resident whose place of residence is registered within the territory of Hungary, who has a legal status as a Hungarian citizen, an immigrant or as a legal person established in the territory of Hungary, and individuals entitled to free movement and residency.

Based on the above the employer must decide which category the private individual intended to be employed belongs to.

Type of legal status

posting and domestic employment

Subsequent to determining the legal status of the employee, the type of employment must be defined. In today's economy, businesses tend to employ foreign professionals on postings, or under domestic employment arrangements. The two statuses have a fundamental influence on the employee's legal status in Hungary. All this essentially means that in the event of a posting, social security status is presumed to exist in the country the person came from, whereas under a domestic employment relationship such may not exist.

Social security status as a posted employee

Since accession to the European Union, the majority of foreign employees to Hungary come from EU countries, therefore, regulations governing the coordination of social security systems must be applied in Hungary too. The purpose of these regulations is to eliminate multiple social security statuses in several Member States, and avoid someone being without social security.

posted person

Based on Article 12 of Regulation (EC) No. 883/2004 of the European Parliament, a person shall be considered a posted person who is employed in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf, provided that the anticipated duration of such work does not exceed **twenty-four months**.

form A1

In the case of legal status as a posted employee, the foreign employee is insured in the country they came from, however, this fact must be proven to the Hungarian authorities too. Form A1 is used for this purpose, the contents of which certify the following statement from the employer:

- prior to the first day of the posting, the employee was insured under social security for at least 30 days (not necessarily at the posting employer)
- the employer shall continue to employ the posted employee for the duration of the posting
- the employer shall continue to pay social security contributions for the duration of the posting
- the employer is not sending the employee to replace another employee previously posted
- the employer shall continue to employ the employee upon the termination of the posting period

In today's business world it also happens that the employer employs the foreign employee under a Hungarian employment contract, but the private individual is insured in another EU Member State. Pursuant to Article 16 of said Regulation, two or more Member States or the competent authorities of those Member States may by common agreement deviate from the person being insured in Hungary. Applications for exemptions must be submitted (if possible jointly by the employer and the employee) in the Member State in which the given employee intends to remain insured.

persons from third countries

It frequently occurs that employees arrive in Hungary from outside the European Union, and therefore their employment is relatively easy. Persons from third countries become insured in Hungary based on their employment (provided there is no social security agreement with the given country), consequently, their social security status is identical to that of employees in Hungarian employment relationships. In the case of persons posted from third countries, it is possible that they do not become insured because the duration of their work does not exceed two years and so they do not qualify as residents pursuant to the Act on Social Security.

Certificates of social security

form A1

Form A1 exempts both the employer and the employee from the obligation to pay social security in Hungary, which means only personal income tax must be deducted from the private individual and the employer in Hungary does not have to pay the 27% social tax and the 1.5% vocational training contribution.

social security ID, form 13T1041

Prior to the employment of a foreign individual from a third country, the following actions must be taken: request a social security ID and a "Certificate on the Right to Health Care Services" form from the competent Health Insurance Fund, and register the insurance status with the Tax Authority (NAV) using form 13T1041. As far as the social security payment obligation is concerned, the individual social security contribution of 18.5% must be deducted from the employee's wages in addition to the personal income tax. The employer must comply with the obligation to pay the 27% social tax and the 1.5% vocational training contribution to the Tax Authority.

If the social security status of the foreign employee can be determined based on the above, close attention must be paid to holding the related certificates in safekeeping. In our experience, the Tax Authority's inspectors will check the existence of A1 certificates in the course of an inspection.

In the event the employee is employed with a social security ID, it is imperative to register the employee with the Tax Authority immediately upon the start of the employment, because failure or any delay in doing so could result in a fine.

In practice, most cases of social security are quite individual, so it is worthwhile examining all the circumstances carefully. If we take the afore-mentioned guidelines into consideration it may be easier to determine individual statuses, which will ultimately lead to the most optimal solution.

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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