

wts newsletter

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highlights

Attention all advertisers! Act on Advertising Tax has been promulgated –
New type of surtax in Hungary – Act XXII of 2014 on Advertising Tax was promulgated in the Hungarian Gazette on 17 June 2014, and will enter into force on the 31st day thereafter, i.e. on 18 July 2014. What is important is that media service providers and press companies may have things to do under the Act as early as this summer because if they are liable for the tax they must prepare and submit a tax return on advertising tax advances to the Tax Authority by 20 August 2014, which they must pay in two equal instalments by 20 August 2014 and 20 November 2014 respectively.

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The tax rate is 0% for the portion of taxable net sales revenues less than 0.5 billion forints, 1% for amounts in excess of said sum but less than 5 billion forints, and thereafter increases 10% for every 5 billion forints, reaching as much as 40% for amounts over 20 billion forints.

The tax liability is triggered by the publication of advertisements. (Making the advertisement available to either the general public or an individual addressee qualifies as publication.)

The deadline for tax returns and paying tax is the last day of the fifth month following the fiscal year. This means that taxpayers closing a general fiscal year (which is in line with the calendar year) must submit a tax return on the 2014 advertising tax by 31 May 2015. The 2014 tax liability applies only to the proportionate year, i.e. to the proportionate advertising revenues calculated in the period from 18 July 2014, when the Advertising Tax Act takes effect, until 31 December 2014.

Taxpayers with a balance sheet date no later than 16 July 2014 and opting for a fiscal year other than the calendar year may be exempted from a 2014 tax liability because according to the Advertising Tax Act, *“taxpayers choosing a fiscal year other than the calendar year shall assess, declare and pay tax and tax advance liabilities in accordance with the legal regulations effective on the first day of the fiscal year”*. For example, a taxpayer who chooses a fiscal year from 1 April until 31 March of the following year and thus the first day of the fiscal year (1 April 2014) clearly precedes the date the Act enters into force does not have to submit a tax return on its 2014 tax liability. In terms of advertising tax, its first tax year will be 2015, with the tax return submission deadline of 31 August 2016.

Taxpayers for whom the first day of their fiscal year falls on or after 18 July 2014 still have to fulfil their 2014 tax liability, but at least the tax return deadline is significantly extended. For example, a taxpayer whose 2014 fiscal year lasts from 1 December 2014 until 30 November 2015 must submit their first advertising tax return by 30 April 2016.

Since the tax base is based on sales revenue, loss-making companies also have to pay this new surtax, which clearly may be significant depending on the sales revenue. The good news, however, is that the tax base of the fiscal year starting in 2014 may be reduced by 50% of tax losses carried forward from previous years, based on a quasi moratorium.

Who are subject to the tax?

In addition to television companies, the tax must be paid by newspaper publishers, entities utilising outdoor advertising means as well as internet portals, in the event they reach the afore-mentioned sales revenue thresholds. However, the latter are in a special position because of a condition stipulating that the given company must publish advertisements on the internet mainly in Hungarian. The exact meaning of publishing adverts *“predominantly in Hungarian”*, how this is measured and how the tax liability will be controlled and enforced at multinational companies publishing advertisements in several countries are all extraordinarily difficult to interpret and raise numerous practical questions if they are not defined in more detail.

There is another large question mark hanging over whether the tax liability can be avoided if the media service provider is not a resident in Hungary. First and foremost it must be emphasised that residence must be determined based on the Media Act, which defines a rather broad concept here. The mere fact that the media service provider does not qualify as a resident does not rule this tax liability out. This is because a foreign media service provider may also be subject to the advertising tax if they broadcast media content in Hungarian for at least half of their broadcasting time.

Test of EU law and the issue of double taxation

Based on experience with previous surtaxes, the advertising tax is also expected to raise the issue of to what extent it complies with the principle of fair competition, and the EU will likely want to learn more about the detailed rules and their conformity with EU regulations. The surtax levied on retailers seems an obvious comparison, which had several elements that also characterise the advertising tax (tax base tied to sales revenues, strong progressivity, sales revenues examined at group level), while the European Court of Justice has already passed a decision in the Hervis case no. C-385/12 that some of its provisions contradicted EU law.

The international implications of the advertising tax should be examined from a legal principle perspective, as to whether the provisions of international bilateral tax treaties protect the companies affected from advertisement revenues being taxed in several countries. Provisions in the OECD's Model Tax Convention reveal that the Convention does not aim to exclude extraordinary type of taxes, though the emphasis is indeed placed on income-type taxes. However, the tax base for the advertising tax is not income (revenue less expense) but net sales revenues of the fiscal year.

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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