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**wts** TAX LEGAL CONSULTING

# wts newsletter

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The Bridge.

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## highlights

Advertising Tax – Questions & Answers!

Tax authority publishes draft advertising tax return and user guide, things to do before 21 August 2014

# Advertising Tax – Questions & Answers!

## Tax authority publishes draft advertising tax return and user guide, things to do before 21 August 2014

*The Hungarian Parliament had just adopted Act XXII of 2014 on Advertising Tax (hereinafter referred to as: Act on Advertising Tax) when we heard about likely amendments to the wording of the act. The amendment, Act XXXIV of 2014 (hereinafter referred to as: Amending Act), eventually entered into force earlier than the Act on Advertising, which was modified in several respects, for example a new scope of taxpayers was specified: advertising customers. Below is a collection of important questions and answers, which will hopefully offer some points of reference with the new tax.*

### I. General questions

#### » When will the Act on Advertising Tax enter into force?

*WTS Klient:* Unusually, the Amending Act entered into force before the act it modified, i.e. the Act on Advertising Tax. The Amending Act is effective from 16 July 2014, while the Act on Advertising Tax will enter into force on 15 August 2014.

#### » Who needs to pay advertising tax?

*WTS Klient:* People subject to the advertising tax can basically be classified into two groups.

Taxpayers in the first group can briefly be referred to as advertising publishers. The Act on Advertising Tax even lists the relevant taxpayers separately (media service providers, media product publishers, entities utilising means of outdoor advertising, etc.).

In accordance with the rules elaborated below, the other group includes advertising customers. This means companies whose core activity is not advertising (e.g. manufacturing and trading companies) may also be subject to the tax.

#### » What records must be kept on the advertising tax?

*WTS Klient:* The Act on Advertising Tax does not specify what records should be kept by taxpayers, so these records can be individually designed. Records on advertising tax must nevertheless meet at least the following requirements.

1. Notes should be based on documents as prescribed by law.
2. Records should consistently contain the data determining the advertising tax and document references, without any omissions.
3. Records should indicate the advertising tax declared for the given period.
4. Records should enable checks of advertising tax payments as well as the underlying documents.

## II. Questions regarding advertising publishers

### » How much advertising tax do advertising service providers (advertising publishers) need to pay?

*WTS Klient:* The tax rate is 0% for the portion of the tax base below 0.5 billion forints, 1% for amounts in excess of said sum but less than 5 billion forints, and thereafter increases by 10% for every 5 billion forints, reaching as much as 40% for amounts over 20 billion forints.

The tax base of the advertising publisher is net sales revenue from the publication of advertisements in the fiscal year, plus the margin of advertising agencies qualifying as related parties. The direct cost of advertising for own purposes should also be included in the tax base.

### » When does the first tax liability need to be met (by advertising publishers)?

*WTS Klient:* Despite the significant change and the later enactment of the Act on Advertising Tax – almost one month compared to the originally planned date of 18 July 2014 – the legislator believes there is sufficient preparation time for advertising publishers subject to the tax to meet their obligation to declare and pay tax advances for 2014 by 20 August 2014. It should be noted that in terms of codification a more suitable deadline could have been specified instead of the date of the foundation of the Hungarian state, since in accordance with the prevailing administrative legal practice if a deadline falls on a non-working day it can only expire on the next working day; consequently, the actual deadline is 21 August 2014.

### » How much tax advance needs to be paid for 2014 (by advertising publishers)?

*WTS Klient:* Based on the net sales revenues from the publication of 2013 advertisements, the sum calculated pro rata for the calendar days of the period between 15 August 2014 and 31 December 2014 should generally be paid as a tax advance in two equal instalments by 20 August 2014 and 20 November 2014 as mentioned above. In some cases the tax base for tax advances must also include the pro rata sum of the direct cost of advertising for own purposes as well as the profit margin of advertising sales agencies (sales houses) that are part of the corporate group, as calculated from the 2013 figures. The tax advance base may nevertheless be reduced proportionately by 50% of loss carry forwards from previous years, provided that the 2013 pre-tax profit is zero or negative.

### » How should the tax liability be determined if advertising services are provided by several companies with the same owner?

*WTS Klient:* Advertising tax liability must be examined at group level, i.e. advertising tax must be determined based on group sales revenue (and other taxable elements such as direct costs of advertising for own purposes as well as group sales house profits), and then divided among the members in proportion to their contribution to the tax base.

The calculations necessary for determining the tax base must be done by group members separately, but in cooperation. The documentation must be retained until the right for tax assessment lapses, and must be presented at the request of the tax authority.

### » Do advertising publishers need to submit a tax return if they have no tax payment liability?

*WTS Klient:* In accordance with the procedural rules of the Act on Advertising Tax, advertising service providers subject to the tax but not obliged to pay tax do not have to declare tax, tax advances and top-ups.

» Does a company need to pay advertising tax if its services are advertised on its own website?

*WTS Klient:* Yes, as mentioned the direct cost of publishing the advertisements serves as the tax base in such cases. For advertisements published on your own website, such direct costs may for instance be the service fee paid to the web designer.

With advertising for own purposes the same rule applies: advertising tax must only be paid if the tax base exceeds half a billion forints. Related companies' costs of advertising for own purposes must be considered collectively.

### III. Questions regarding advertising customers

» In what cases must advertising customers pay advertising tax?

*WTS Klient:* One of the most important changes of the Amending Act is that not only advertising service providers (advertising publishers) are covered by the Act on Advertising Tax, but also advertising customers. With the exception of sole traders, private individuals advertising on the internet, however, can relax as they are not subject to the advertising tax.

Customers must pay a 20% tax on monthly amounts spent on advertisements exceeding HUF 2,500,000. However, no tax liability arises if the advertising customer has a statement from the advertising publisher that the advertising publisher is subject to the tax liability and meets its obligation to declare and pay tax, or, that the advertising publisher is not obliged to pay tax in the fiscal year on the publication of the advertisement. (For lack of such a statement, not only the tax payment liability is transferred, but the cost booked on publishing the advertisements – as a non-business-related cost – also increases the corporate tax base.)

It is still not known whether exceeding the HUF 2,500,000 threshold should be considered separately each month or on an aggregate basis. In our opinion, it follows from the grammatical and taxation interpretation of the act that customers only have to pay advertising tax if the amount paid for advertisements in the given month exceeds the above limit. For example, if a company pays a sum of HUF 2,499,000 per month for online advertising (i.e. almost HUF 30,000,000 a year), it does not pay advertising tax, but if another company once paid HUF 5,000,000 for advertising purposes and does not have the advertising publisher's statement as specified above, it shall pay tax of HUF 500,000 into the state coffers.

» When do advertising customers need to pay and declare the tax for the first time?

*WTS Klient:* For lack of a statement from the advertising publisher, advertising customers must declare and pay the tax by the 20th day of each month following receipt of the accounting documentation and invoice for the publication of the advertisement. As the Act on Advertising Tax is effective from 15 August 2014, a tax return must first be submitted in September on invoices received between 15 August 2014 and 31 August 2014.

This way, and sticking with the above example, if the advertising customer receives the invoice of HUF 5,000,000 on 21 August 2014, the tax must be paid and declared by the taxpayer by 22 September 2014 (given that the last day for fulfilling this obligation is a non-working day).

Please note here that it is not yet clear how the customer should proceed if the invoice is corrected by the issuer, who retrospectively states on the invoice that it will pay the advertising tax on the invoiced sum. In such cases the question arises of whether the customer will be able to reclaim the tax, and if yes, for which tax assessment period.

- » Do advertising customers have any tax advance or top-up liability?

*WTS Klient:* Advertising customers do not have any tax advance or top-up liability.

- » Should the considerations for related companies' advertisement orders be added up when determining the tax base?

*WTS Klient:* No, pursuant to the Act on Advertising Tax the tax base of related companies must only be considered in terms of the tax base arising from the publication of advertisements.

- » Do advertising customers have to submit a return if advertisement orders – not covered by the statement – do not exceed HUF 2,500,000 in the given month?

*WTS Klient:* This also needs to be clarified by practice because the Act on Advertising Tax does not contain any specific provision for this, but based on the draft advertising tax return and user guide it does not appear as if a return must be submitted in such cases.

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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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