11/2017
17 March 2017

wts TAX LEGAL CONSULTING

wts klient newsletter

WTS Klient.
The Bridge.

Dear Readers,

We would like to make the dawn of spring memorable with a new feature: from middle of March we will have a **four-part video series** entitled **"WTS Klient minutes"** which will introduce you to the **strategic, accounting, legal and taxation issues** of IFRS (International Financial Reporting Standards). The videos are available only in Hungarian currently. We will be focusing on the advantages as well as the potential pitfalls of switching to IFRS. We will look at which companies can adopt IFRS and with what deadlines. We will set out the legal requirements that may apply to given companies. We will identify what to look out for from the perspective of taxation. Here is the **"link"** to our first video in this newsletter. We look forward to hearing how you like it. But don't forget to read our newsletter either! We hope you will enjoy them both!
You can access the video in Hungarian language here: wtsklient.hu/2017/03/17/ifrs-atallas-strategia/

Zoltán Lambert
Managing Partner

Fringe benefit changes: still worth it?

"The result of the fringe benefit changes is that several popular fringe benefits are subject to higher taxes in 2017 but they can be **provided without limiting the associated threshold.**"

Author: **Marianna Fodor**
marianna.fodor@wtsklient.hu

Articles 69-71 of Act CXVII of 1995 on Personal Income Tax (Personal Income Tax Act) regulate in Hungary the tax liability of fringe benefits and other benefits. These rules were modified in several aspects in 2017.

Fringe benefits

One important element in the fringe benefit changes in Hungary is that the value of the fringe benefit has to be multiplied by 1.18 and this is subject to 15 percent personal income tax and 14 percent health care. Thus the total tax burden fell from 34.51 percent last year to 34.22 percent this year.

From 1 January 2017 the range of fringe benefits that employers can provide was narrowed down, and several elements were transferred to other benefits. In the private and public sectors, the allowances subject to favourable taxation are HUF 450,000 (EUR 1,440) and HUF 200,000 (EUR 640) respectively. These are net values and apply to the amount of the benefit given. The Széchenyi Recreation Card can be granted with the known sub-accounts and limits, while cash can also be paid up to HUF 100,000 (EUR 320) with the same taxes.

Other benefits

A 15 percent personal income tax and 22 percent health care contribution are payable on the value of other benefits x 1.18. Consequently, the total tax burden fell from 49.98 percent last year to 43.66 percent this year.

The result of the fringe benefit changes is that several popular fringe benefits are subject to higher taxes in 2017, but they can be **provided without limiting the associated threshold**. For example, in addition to providing Erzsébet vouchers, back-to-school support, local public transport passes, workplace canteens, company-owned holiday resorts and formal training, the employer can contribute to a voluntary pension fund and a health fund without any limitation, subject to a 43.66 percent tax liability.

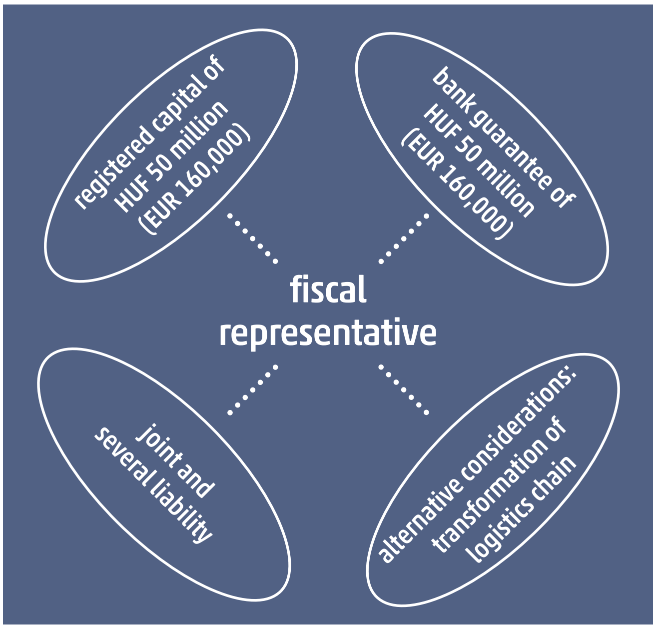
Tax-free benefits

The range of tax-free benefits has remained, and indeed has been expanded. Tickets to cultural events, sports events, housing loan support and crèche services will still be available with slight modifications. Furthermore, housing allowance to facilitate mobility and the reimbursement of nursery care and services were also previously added to the tax-free benefits.

Still worth it?

Fringe benefits have lower tax burdens compared to salaries, it is a cost-efficient benefit which has tax-free and contribution-free elements as well (these tax-free elements can even be given even individually, independently of the fringe benefit policy). Fringe benefits typically result in cost savings since they are less of a burden for the employer in terms of taxes and contributions. Applying the system can be adjusted to the current financial situation, while usage can be measured and monitored continuously. In a transparent fringe benefit system, employees know the value of the elements as well as their available allowance, so they can easily select the combination that is right for them and meets their individual needs.

Obligation or opportunity? Who can be a fiscal representative?



Author: **Béla Kovács**
bela.kovacs@wtsklient.hu

In the introduction to our series on fiscal representation we mentioned that a foreign company can engage a fiscal representative in the interests of fulfilling its Hungarian tax liabilities.

Who has to have a fiscal representative?

Experts interested in the details will find references to legal regulations on fiscal representation in both the Act on VAT and the Act on Rules of Taxation. Generally speaking, a foreign company that is non-resident in Hungary from the perspective of VAT may engage a company with such VAT status. However, if the foreign company has its registered office or permanent establishment in **a third country**, i.e. outside the European Union, it is **mandatory** for it to engage a **fiscal representative**. Essentially the fiscal representative enables a special form of VAT registration in Hungary.

In practice, when a business organisation registered in Switzerland has a VAT liability in Hungary, it can only fulfil its tax liability payment through a fiscal representative. It is important to note that this does not necessarily mean an actual tax payment obligation: this can also apply even if registration in Hungary is required because of a tax exempt service provided in Hungary (e.g. passenger transportation) which ultimately does not result in a tax payment obligation. The administrative burden here is too significant compared to the fact that the company only has to include a single tax-free item in its tax returns.

So after all the scaremongering: who do we need?

For the purposes of VAT registration in Hungary, a company from a third country has to find a Hungarian limited liability company or a company limited by shares, whose **registered capital** is at least **HUF 50 million** (EUR 160,000), or which is able to obtain a **bank guarantee** of the same amount and does not have any tax debt at the tax authority. None of this is easy, since in practice most of the local business organisations do not have registered capital to such an extent (even maintaining the statutory minimum poses a problem for many of them) and obtaining such a high bank guarantee whilst bearing the cost of it would probably be a huge burden for them too.

The reason why most companies, including advisory firms, are reluctant to assume the role of fiscal representative is that the fiscal representative and the foreign ("VAT registered") company have **joint and several liability** for the Hungarian tax liabilities of the foreign (represented) company. This means that the Hungarian tax authority may claim each tax debt from both the foreign company and the business organisation acting as the fiscal representative. Risks are often difficult to estimate beforehand at the company assuming the status of fiscal representative. Not to mention that the existence of the HUF 50 million (EUR 160,000) registered capital or bank guarantee is far from certain to cover all potential risks: understandably, engaging local companies requires a thorough and prudent preliminary review and risk analysis.

It is very common within an international group that under the pressure of the parent company, the Hungarian subsidiary "voluntarily assumes" this task, and it often does so without a detailed situation assessment or risk analysis.

Self-revision – useful information

During a self-revision we need to pay attention to the following:

- self-revisions have to be submitted prior to the **start of the tax authority's inspection of the tax type** at the latest
- we **cannot** submit a self-revision for a **period that is time-barred or which was closed with an inspection**
- **no self-revision** can be performed **if we** previously and lawfully **availed of our statutory right to choose something** in our tax return

Author: **dr. Tamás Felsmann**
tamas.felsmann@wtsklient.hu

A self-revision is one of the most important legal institutions of the Act on Rules of Taxation, which allows companies themselves to correct any tax bases filed incorrectly or any tax liability, so as to avoid these issues being detected by the tax authority during a potential tax inspection. Obviously, a self-revision is more expensive than managing to declare everything correctly in our tax return the first time round, since the general rule is that a self-revision interest has to be paid if the liability increases, but this is still much cheaper than when the tax authority finds the tax shortfall and imposes a 50% interest alongside a late payment interest.

What is the deadline for submitting a self-revision?

It is common knowledge that **from the start of a tax authority inspection in Hungary, no self-revision tax return can be filed in respect of the tax subject to the inspection for the period in question**; such tax returns are automatically rejected by the tax authority, or to use the technical term: "hibernated". However, many forget that a self-revision only qualifies as being submitted prior to the tax authority's inspection if this took place at least one day before. Consequently, if the inspectors' engagement letter is received on the date of the self-revision, our self-revision will not be accepted. Indeed, there is reason to believe that the content of the tax return submitted as part of the self-revision will be reflected in the findings of the inspectors as the basis for a tax penalty. However, the tax authority knocking on the door does not always mean that we cannot perform a self-revision. On the one hand, there is a type of inspection that does not pose an obstacle on the other hand, as part of the cooperative procedure introduced from 2017 the tax authority in Hungary can itself call upon the taxpayer to submit a self-revision.

Not everything can be modified with a self-revision

It is important that a self-revision cannot be performed if we previously and lawfully availed of our statutory right to choose something, for example, our chosen method of cost accounting cannot be subsequently modified. By contrast, as a general rule, a tax allowance can still be claimed subsequently even if the tax return did not include a decision on it. This latter provision, however, may be overwritten by individual provisions under substantive tax law in Hungary. For example, we can claim a personal income tax allowance related to certain serious illnesses with a self-revision, provided the relevant conditions are fulfilled, but tax allowances affecting corporate income tax cannot be claimed in a self-revision. So it is worth being prudent and turning to an expert, such as WTS Klient, prior to submitting your corporate tax return.

An additional limitation is that no self-revision can be submitted in principle for a time-barred period or a period already closed by the tax authority with an inspection. In the latter case, initiating a so-called repeat inspection can be the only way to modify data previously determined. That said, a legal regulation valid since 1 July 2016 stipulates that if a court adopts a legally binding decision regarding the taxpayer's tax liability beyond the time-barred period, then in order to resolve this tax liability the taxpayer is entitled to submit a self-revision for the time-barred tax assessment period.

How much does a self-revision cost?

The self-revision interest equals 50% of the late payment interest calculated using the central bank's key rate of interest, while in the case of repeated, i.e. second and any further self-revisions, it is 75% of the late payment interest. **The self-revision interest in HUF has to be calculated from the day after the deadline for submitting the original tax return expired until the day the self-revision tax return is filed.** If we want to be very precise, we look at the calendar too since the deadline for filing tax returns can only expire on a working day. For example, 25 February was a Saturday this year, so the self-employed were able to submit their personal income tax returns on 27 February; this means the start date for the self-revision interest calculation is 28 February if they have to submit a self-revision for this tax return. The tax authority's calculator is very useful when calculating the self-revision interest. The self-revision interest can theoretically be decreased in Hungary, but it has to be verified that the mistake was caused by circumstances that would also support a mitigated penalty.

Services of the WTS Klient Hungary:

- Tax consulting
- Financial advisory
- Legal consulting
- Accounting
- Payroll

Should you have any questions regarding the above or any other professional issues, please do not hesitate to get in touch with your WTS advisor or use any of the contact details below.

WTS Klient Hungary
1143 Budapest • Stefánia út 101-103. • Hungary
Telephone: +36 1 887 3700 • Fax: +36 1 887 3799
info@wtsklient.hu • www.wtsklient.hu