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# LAW SHOOTER

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## FIRST LAW NEWS OF 2015

Having won the Law Firm of the year in 2014 we can say that it was a very successful year for BWSP Gobert and Partners. 2015 has also started on the right foot with our Managing Partner having been re-elected as the President of the German Business Club.
In this first newsletter of the year you will be able to read an article on one of the most significant tax changes for 2015, with a guidline to "the EKAER system". We continue with our court news series related to the succession of the employer and we finalize with the information about how to calculate the 15 days termination deadline in case of notice with immediate effect by the employer.
We hope that you will enjoy this months edition, we wish you all the best for this year and remain at your entire disposal should you have any questions regarding the articles.

***Dr. Arne Gobert***
***Managing Partner***

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## CHANGES IN THE RULES ON TAXATION

We have begun the introduction of the amendments and news brought by the „tax package“ adopted in the end of year 2014 in our previous newsletter (in December) regarding the retail sector.
This time we provide a summary on the most important changes of the Act on the Rules of Taxation („Art“), within which our more detailed priority topic is the EKAER system - deserving a great deal of interest - and the most important questions arising in connection to it, further we provide a guidance for registration.
-**Stemming from a new general fundamental principle**, the income can be taxable in Hungary, if the legal relationship, and the income arising therefrom is affected by an international contract and the differing taxation system among the member states and its legal classification would result in the fact that the given income could not be taxed in none of the states. Tax authority determines the tax – if the tax base cannot be determined, with estimation -

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taking into account all circumstances.
Tha arts provsions of general principles have been supplemented on guarantee basis and for the purpose of clarification of the legal practice with such fundamental principles eleveted to statutory level *as the requirement of same classification of identical legal relationships.*
Thus the tax authority could not determine a different classification for a legal relationship already covered by and classified during an audit when auditing the parties to that legal relationship.
**-From now on an auditor** may also act as a representative in the procedure before tax authority, although they did not figured in the list of the Art as persons entitled to proceed.
**-Notification rules pertaining to the persons obliged to pay health services contribution** have been supplemented to the extent that the tax authority deletes upon request with retroactive effect the contribution payment obligation of the private individual living abroad, if the private individual credibly demonstrates that it did not use health services in the given period. Further condition to abolish the contribution payment obligation is that the private individual did not use health service financed by Health Insurance Fund in the given period.
**Exemption from notification obligation has been supplemented in case of foreign taxpayers** As a general rule to pursue Hungarian taxable activites the taxable person must register at the state tax authority for the determination of a tax number.
The act stipulates among the notification rules – as exception from the general rule – that a certain foreign scope of subjects (domestically non-established, or not obliged to establish domestically, but established in other country of the Union) may be exempted from the registration obligation if its domestic activity is exclusively limited to the sale in VAT warehouses, or to export products to third countries from those, whereas these legal acts are tax exempted. In these cases instead of the foreign taxable person – based on agreement – the tax obligations pertaining to the tax-exempt intra-Community supplies are conducted by the operator of the tax warehouse. However, simultaneously by reporting the commence of the taxable activity whether the taxable person acts as the operator of the tax warehouse.
**New reporting obligation (!): mandatory notification of the food and beverages automatic vendor machines.** As of 2015 the operators of the automatic vendor machines carrying out food sales without operating personnel are obliged to notify the beginning of the sale and its termination and the alteration of the data content of the notification. The notification must be submitted until the 31 March, 2015 and it is subject to administrative service fee, of which amount is HUF 30 000,-. The tax authority registers the automatic vendor machines based on the notification and defines a registration number.
The tax reports and equivalent declarations **of taxpayers subject to increased tax authority supervision** will not have to be countersigned by tax advisors, tax experts or certified tax experts as of 2015 taking into account that this obligation was causing both the tax authorities and taxpayers administrative burden and extra costs; therefore, the provision prescribing such obligation was abolished.
In case of **employer's tax determination** the new deadline is the **20th of May** (instead of the earlier 10th of June), thus the deadlines for submitting the reports were unified. The employer determines the tax base and the tax upon the declaration of the private individual until the 30th of April following the tax year and provides certificate on that.
**In case of VAT recapitulative statements the limit of the amount decreases to HUF 1 million.** Pursuant to the respective regulations the taxpayer fulfilling the transaction is obliged to provide data, if the amount of the output VAT in the invoice issued by it reaches or exceeds HUF 2 million. As As of 2015 this amount limit decreases to HUF 1 million. Furthermore, the taxpayer obliged to VAT recapitulative statements may upon his choice fulfill this obligation without taking this limit into account (that is report every invoice not reaching HUF 1 million).
**The scope of subjects obliged to provide data is extended, new deadlines for financial institutions**!
The organizations providing telecommunication services are obliged to provide data on the traffic data of the internet purchases within 15 days upon the inquiry of the tax authority. The purpose of this is the promotion of the monitoring and exploration of the tax payment obligations.
The financial and payment institutions and investment firms are obliged to provide data towards NAV with regard to data managed by them and deemed to be bank secret. The provision of data happens electronically since 2013. The Art specifies this time that the inquiry on connection with enforcement procedure shall be fulfilled towards the tax authority with 8 days and inquiry necessary for monitoring procedure within 15 days.
**The NAV may inform other subject taxpayers during the monitoring procedure** in as much as



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the tax authority based on the data being its disposal and upon the facts and circumstances explored during its procedure observed such contractual or other connections (related with each other) and affecting more taxpayers, regarding to which conduct obeying tax acts can be presumed or defines or presumes tax evasion.
This provision was included in the act in accordance with the practice of the European Union for the purposes that the affected taxpayers (e.g. contractual partners) are to promote the proper and careful exercise of rights.
**The lengthening of the limitation of the right to tax determination:** The right to tax determination is prolonged by 12 months instead of 6 months, if the superior tax authority within the framework of the second instance proceeding, the minister responsible tax policy or the minister appointed for the supervision of the NAV within the framework of monitoring measures and in the case the court renders to conduct new procedure upon the judicial review of the tax authority's order.
**Higher amount of default penalty can be imposed as a legal consequence** than the general amount of default penalty in case of hindering the tax investigation by failing to meet the obligation to appear by infringing the cooperation obligation or otherwise hindering the investigation. This amount was in case of private individuals maximum of HUF 200 thousand in case of other taxpayers HUF 500 thousand. From now on a higher sanction can be imposed, thus in case of private individual tax payer it may be HUF 500 thousand and in case of other taxpayer HUF 1 million.
**The notion of affiliated companies have changed:** the conceptual amendment figuring among the interpretational provisions is in connection with amendment of the act on corporate tax and dividend tax. The identity of the person of the managing director also creates the affiliated company relation; whilst via the identical management the decisive influence on the company's business and financial policy is established.
Besides the notions in connection with the introduction of EKAER system – e.g. EKAER number, hazardous product, end user, recipient, dispatcher - have been defined as well.

# EAKER SYSTEM

# NEW INSTITUTION TO COMBAT TAX FRAUD

One of the most significant tax changes in 2015 is the introduction of EKAER (Electronic Road Transportation Control System). The purpose of the system is the tracking of the way of goods, the insurance of the payment of public burdens and to hinder that goods are put in circulation in Hungary that were not previously reported to the Hungarian Tax and Customs Authority (NAV).
The Act on Rules on Taxation (Art.) for the above purposes regulates in detail the reporting obligation and sanctions applicable in case of failure to comply with the reporting obligation and providing security deposit, of which main rules we wish to introduce in summary hereunder as follows.
Reporting must be fulfilled in connection with transports initiated on and following the 1 January, 2015.
*Who and what activity is concerned by reporting obligation*
Reporting obligation concerns taxpayers involved in road transportation activity in as much as it is pursued with vehicles subject to a road toll (having a total weight of over 3.5 tons). The scope of hazardous goods constitutes an exception from the general rule; whereas in their case the reporting obligation applies if the product is not transported with vehicle subject to road toll (exemption from these applies only in case of specific conditions).
Road transportation activity shall mean and is mandatory to report to the tax authority:

- the acquisitions of goods or importation for other purposes to Hungary from other member states of the European Union (obliged to comply with reporting: addressee/ recipient until starting the transportation the latest);
- the supply of goods or exportation for other purposes from Hungary to other member states of the European Union (obliged to comply with the reporting: sender until starting the loading the latest); and
- the first taxable supply of goods to non-final users within the territory of Hungary (obliged to comply with the reporting: sender until starting the loading the latest).



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*Exemptions*

Certain taxpayers are exempt from the reporting obligation upon subjective right (e.g. vehicles transporting goods covered by excise duty, vehicles participating in preventing or averting damages caused by a disaster, vehicles transporting non-commercial (free of charge) humanitarian relief supplies etc.).

The act provides further exemptions from registering into EKAER system based on the nature and quantity of the cargo in case certain conditions are fulfilled, namely

if the weight of non-risky goods in one transport does not exceed 2500 kg or if the non-taxed value of those goods does not exceed 2 million HUF, or

if in one transport the weight of risky food products does not exceed 200 kg or its non-taxed value of 250 000 HUF, the weight of other risky products does not exceed 500 kg or its non-taxed value of 1 million HUF.

*Data content of the reporting*

The notification must be fulfilled with the data content defined in the Annex 11 of Art, thus among the reportable data include especially, the name and gross quantity of the goods, customs tariff number, net value, date of loading and arrival to the place of receipt, further the personal identification data of the sender and the recipient as well.

It is extremely important to be informed with due caution about the precise statutory data content during every notification; whereas, the defective, or false reporting may trigger the validity of the notification and not least serious sanctions.

*The mode of reporting*

Reporting shall be made electronically through the electronic site of the EKAER system – accessible through the internet – by creating a username and password directly for this purpose (http://ekaer.hu/regisztracio/). The taxpayer may fulfill its reporting obligation personally or through a representative.

*EKAER number*

Based on the reporting the tax authority determines an identification number, a so called EKAER number, which is generated on the site of EKAER following the notification, in case it is of correct data content it is simultaneously registered. The EAKER number identifies the product unit transported by the given vehicle and thus to one EKAER number more product types identified with customs tariffs number can relate.

It is important that the EKAER number is only valid for 15 days, thus arrival to the place of receipt and date of the start of loading must fall under this period.

*When shall the security deposit be provided?*

Firstly on the 31 January, 2015 based on the value of the hazardous products registered on EKAER until this date. The security deposit must continuously reach the 15% of the joint - net (without VAT) – value of the hazardous products pertaining to a valid EKAER number. The deposit provision may be provided through payment into a separate deposit account or by providing a guarantee registered by the tax authority.

Tax authority reviews every day prior to the end of the month whether the taxpayer providing security deposit has tax debt, whereas in such case he is in position to set off the amount of the deposit with the debts and the taxpayer must repeatedly supplement the thus decreased security deposit.

Guarantee rule is that in case certain conditions exist it is possible to be exempted from the obligation to provide security deposit.

*Sanctions*

In case of failure to comply with the reporting obligation and other infringements related to the EKAER number various sanctions may apply, thus for example an unreported product will be will be regarded as having uncertified origin and the tax authority may impose a default penalty of up to 40 % of the consideration of the unreported goods. In relation to the default penalty sanction relating to non-compliance with the reporting obligation the goods qualifying as goods of uncertified origin may be seized up to the amount of the penalty. It is also notable that the tax authority may also demand a declaration from the addressee, the dispatcher and the carrier concerned in the case of transportation of goods of trading quantity on the transported goods and EKAER number.

Pursuant to the legal regulations the tax authority planned to introduce the sanctions as of 15th January, 2015; however, according to the report of the Ministry for National Economy as of 22nd January, 2015 coworkers of the tax authority will not impose default penalty until the end of the trial run, but until 1st of March, 2015, furthermore, until this date the taxpayers



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are also exempted from the payment of security deposit.

Based on the remarks and proposals received from the market actors and upon the experiences of the trial run the necessity and possibility of the alteration of the legal regulations pertaining to EKAER are also investigated.

In case of individual, specific questions, our experts remain available at your kind disposal.

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## NEW DECISION BY THE SUPREME COURT IN THE SUBJECT OF THE SUCCESSION OF THE EMPLOYER

**In case of the termination of the employee important question could be arisen whether the economic activity of the employer is basis on basically human resource or it basis on basically the application of tools if the termination was reasoned with the cessation without legal successor of the employer. The Supreme Court has taken a stand in connection the case no. Mfv.I.10.156/2014 whether there was a legal succession in the legal relationships of the employees when the operation of the petrol station was delegated to another contractor.**

In the aforementioned case the employer operated a petrol station as private enterpriser under a contract which was concluded with the owner. The owner was the owner of all tools, accessories and stocks relating to petrol station. After the owner has denounced the contract – because it would like to transfer the operation of the petrol station – the employer has terminated the employment relationships with the employees on the grounds that the denouncement of the operation contract results the cessation without legal successor of the employer, thus there is no chance to employ them henceforward.

The courts of trials and the Supreme Court took as basis the case-law of the European Union Court and contrary with the aforementioned they were led to the conclusion that if the employer terminated its private enterpriser activity – in this case the operation of the petrol station – it shall not qualified as cessation without legal successor. Namely the termination of the operation contract shall not result the termination of the legal capacity which is necessary for the subjectivity of the employer. One previous court verdict has already adjudged that the termination of the activity of the private enterpriser shall not result the cessation without legal successor of the employer. (BH.2004.335)

According the case-law of the European Union Court the performed activity has significant role at the establishment whether the legal succession was occurred in the employment relationship of the employees in the given unity. By the activities of the new operator, thus in case of the operation of the petrol station must be investigated whether the human resource or the application of tools shall underlie for the activity of the operator. In the first case the legal succession of the labor law materialize by the transfer of the significant part of the employees, in turn in the latter case by the regular application of tools shall lead to the legal succession of the labor law.

The operation of the petrol station is obviously basis on basically the application of tools, thus the significant step was the handover of the tools instead of the transfer of the employees from the new operator. Irrespectively from the fact that the new operator did not take over the employees, the petrol station as defined work place has still remained. Only the legal succession of the employer has occurred by the appearance of the new operator, the labor relationship of the employees has remained with unchanged content, thus the exchanged of the old operator has not result the cessation without legal successor of the employer.



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# HOW SHOULD WE CALCULATE THE 15 DAYS TERMINATION DEADLINE IN CASE OF NOTICE WITH IMMEDIATE EFFECT?

According the Labor Code the right of notice with immediate effect may be exercised within 15 days from the awareness of the reason which serve as a basis for the notice. However the interpretation of this simple rule divided the parties and the competent court in a pending labor dispute (Mfv.I.10.215/2014). Therefore the Supreme Court has published a handout on its web page which shall be summarized as follows.

In the aforementioned dispute the open ended question was that when should be considered the 15 days deadline not delayed: does the deadline stop when the employer just exercised its notice right (thus it made the decision and pen it and mailed it by post), but the employee has not become factual awareness with the notice at the last day of the deadline; or does the notification itself has to be occurred within the 15 days deadline?

According the interpretation of the Supreme Court the prior option shall prevail in accordance with the provisions of paragraph 6 of Section 25 and paragraph 2 of Section 78 of the Labor Code.

So in a given case it is sufficient that the employer takes action to inform the employee via post about the notice within the 15 days deadline, but the notification itself must be not occurred.

However it is important to note that this calculation method shall relate only to the deadline of the notice with immediate effect. For example in case of paragraph 8 of Section 28 of the Labor Code the law is stricter in connection with the 30 days' time period for contestation: according to this Section the statement in relation to contestation must be announced with the other party until the expiry of the time-period, in this case it is not sufficient to post it o the other party.

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