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GOBERT, FEST & PARTNERS
ATTORNEYS AT LAW
BUDAPEST ■ BUCHAREST

THE TAX SHOOTER

(May, 2009)

TAX SERVICE LINE

There can be no doubt about the fact that tax is an integral part of the corporate environment irrespective of the activity carried out by or the size of a corporate entity. Keeping abreast of the frequently changing tax environment requires a great deal of effort from companies. The complexity of business transactions and the differences between the domestic and foreign tax systems offer many opportunities for tax planning, may however result in unforeseen tax risks at the same time.

As a consequence of Hungary's accession to the European Union, the domestic tax system became more colorful as it has to be in line with several EU regulations, representing a significant challenge for corporate entities carrying out business activity in Hungary.

In the course of 2008, Gobert, Fest & Partners Attorneys at Law decided to set up its new service line, its tax department in order to provide its clients with full range of legal and tax services to be of their assistance in achieving their business goals under highly competitive market conditions.

Our tax colleagues participate in the preparation of business decisions of our clients and in the exploration of tax efficient opportunities always taking into consideration at an utmost extent the need for avoiding unnecessary tax risks.

The concept of our law firm is based on the idea that the overall tax implications of business transactions are significant factors and both corporate entities and private individuals may realize substantial cost savings by way of prior tax planning. It is, therefore, more than worth planning both domestic and international tax consequences before the implementation of well-designed and efficiently structured business models, cross-border transactions.

The main innovation and advantage of our firm consists in not only the provision of our clients with tax consultancy and tax planning services, but also providing them with legal advices and legal representation in front of tax authorities and courts, if required.

Our firm is preparing to shortly become a member of global network made up of highly experienced professionals capable of providing objective, independent tax advices. This allows us to suggest our clients tax-efficient solutions also as regards cross-border transactions and to set up tax friendly international structures.

When having established our tax practice, we were aiming to set up a department where – with special focus on the nature of this specific area – both economists and lawyers worked together on taxation matters in order to find the most efficient solutions for challenges that the respective business environment dictates.

Warmest regards,



Dr. Arne Gobert

CONTENTS

Tax Law Changes	2
Private Individuals	2
Corporate Identities	3
Real Estate	3
Romanian Tax update	4
Tax Services	6

THE TAX SHOOTER - THE NEWEST PLANS FOR TRANSFORMING THE TAX SYSTEM

One of the most important steps of the freshly formed government are related to the transformation of the Hungarian tax system. The plans on the one hand aim to stabilise the state budget and to offset the consequences of the global economic downturn, on the other hand it is also intended to transform the domestic tax system in order to increase its competitiveness, as it may be concluded from the statements published in the press.

In the short term, the most relevant aims are to improve the employment situation in order to prevent the mass layoffs arising from the economic depression and to help corporate entities (with special regard to small and medium enterprises) to survive.

The new tax regulations may have influence on the current tax year – as we could see relating to the draft act proposed and submitted by the previous government and suspended in negotiation simultaneously with the changes of the political situation – but the most relevant steps will enter into force as of January 2010.

Our intention is to point out to the most significant elements of the possible tax-package to be submitted to the Parliament that may have relevant impact on the taxation of both business associations and private individuals. Please note that the expected changes introduced in the current issue are subject to continuous review.

TAX LAW CHANGES RELATED TO PRIVATE INDIVIDUALS

1. PERSONAL INCOME TAX AND SOLIDARITY SURTAX FOR PRIVATE INDIVIDUALS

1.1. THE EXPECTED CHANGES OF THE TAX TABLE AND TAX RATES

The transformation of personal income tax system would take place in two steps. The annual income bracket would be increased with retroactive effect to January 1, 2009, however the tax rate would remain unchanged as regards 2009.

Annual income bracket	Tax rate
HUF 0 – 1.900.000	18%
In excess of HUF 1.900.000	36%

As from January 1, 2010 the system of personal income tax would be significantly reformed. The annual income bracket would be increased to HUF 4-5.000.000 and tax rates would be decreased by 1 to 3 percentage points (lower rate: 15-17%, higher rate: 33-35%).

The most significant change would be the transformation of the personal income tax base. The tax base would include not only the gross income of the private individual, but also the social security contributions paid by the employer. This would result in a 24% increase in the tax base (provided 5 percentage point reduction of the total social security contributions paid by the employer would be accepted by the Parliament).

The solidarity surtax for private individuals would not be eliminated this year, therefore in excess of HUF 7.446.000 the private individual would still be subject to a 4% additional charge.

1.2. OTHER CHANGES RELATED TO PERSONAL INCOME TAX

According to the draft submitted in springtime, the majority of personal income tax incentives would have been abolished and system of fringe benefits would have been significantly transformed.

At present, the details of other changes as regards in particular tax credit, personal income tax incentives or benefits in kind are not published by the new government.

1.3. RETIREMENT AGE

The plans still contain proposal as regards the progressive raise of retirement age to 65 years.

TAX LAW CHANGES RELATED TO CORPORATE ENTITIES

2.1. SOCIAL SECURITY CONTRIBUTIONS TO BE PAID BY THE EMPLOYER

Within the meaning of the draft act, as from July 1, 2009, the social security contributions to be paid by the employer would be decreased by 3 percentage points as regards the double amount of prevailing minimum wage¹.

This way, the social security contributions levied on employees' wages and payable by employers would be as follows:

Income bracket	Contribution rate
HUF 0 – 143.000	24%
In excess of HUF 143.000	29%

As of January 1, 2010, the contribution rate would be fixed at 26% regardless of the employee's income.

The health care contribution of HUF 1.950 payable by the employers would be abolished as of 2010.

2.2. UNEMPLOYMENT INSURANCE CONTRIBUTION TO BE PAID BY THE EMPLOYER

The previously planned tax package contained proposals for the 2 percentage-point-reduction of the unemployment insurance contribution of employers. The method of the reduction of unemployment insurance contribution would have been the same as presented relating to social security contributions.

At present, plans regarding unemployment insurance contribution have not yet been published.

2.3. CORPORATE INCOME TAX AND SOLIDARITY SURTAX

The planned regulations would enter into force on January 1, 2010. The CIT rate would be increased by 3

percentage points, from 16% to 19%. The tax base adjusting items would be modified significantly, but details have not yet been published.

Simultaneously with the raise of CIT rate, the 4% of solidarity surtax would be abolished with the same effect. With regard to the fact that tax base for corporate income tax and solidarity surtax are nearly the same, the proposal would finally mean a 1-percentage-point decrease in corporate tax burden.

2.4. VALUE ADDED TAX

The standard rate of VAT would be increased from 20% to 25% in contrast to the previously planned 23%. However, an intermediate rate of 18% would be introduced for milk, dairy and bakery products, and distance heating services.

2.5. EXCISE DUTIES

Similarly to the previous tax package submitted in March, the excise duty rates would be increased by 5 percentage points on average.

GENERAL REAL ESTATE TAX

One of the biggest surprise of the newly planned tax package is the general real estate tax based on the value of the real estate.

The real estate tax would be assessed on a progressive base and it would be levied on each real estate regardless its value (not only on real estates the value thereof exceeds HUF 30 million – as presented in last years' plans). The tax rate would be similar to the currently existing real estate tax that may be levied by local municipalities and the system would contain equity factors (for example as regards retired persons).

¹ As of January 1, 2009 the prevailing mandatory minimum wage is HUF 71.500



1. SOCIAL SECURITY CONTRIBUTIONS

The provisions of Law no. 19/2009 published in the Official Gazette on February 27, 2009 have amended the social insurance contribution rates **as of February 1, 2009**, as follows:

- for “normal” working conditions – **31.3%**
(employer’s contribution – 20.8%, employee’s contribution - 10.5%);
- for “difficult” working conditions – **36.3%**
(employer’s contribution – 25.8%, employee’s contribution - 10.5%);
- for “special” working conditions – **41.3%**
(employer’s contribution – 30.8%, employee’s contribution - 10.5%).

Consequently, the employer’s contribution has been increased by 2.3%, while the employee’s contribution has been increased by 1%.

The **health insurance contribution** rates applicable for 2009 remain at the level applicable for December 2008:

- employee’s contribution – **5.5%**;
- employer’s contribution - **5.2%**.

The rates for the employer’s and employee’s unemployment fund contribution applicable for 2009 is 0.5% (the same as for December 2008).

2. HOLIDAY VOUCHERS

The Government Emergency Ordinance no. 8/2009, published in the Official Gazette on February 24, 2009, allows employers which had a profit in the previous year to grant to the employees holiday tickets. The maximum level of amounts granted to employees as holiday tickets in one year cannot exceed **six times the value** of the gross minimum guaranteed salary (which for 2009 is RON 600/month, i.e. EUR 140/month).

The amounts granted by means of holiday tickets are deductible for the purpose of calculating taxable profit, or income, as the case may be, only within the above mentioned limit. Furthermore, the amounts received will not be included in the base for the calculation of income tax or social insurance contributions payable by the employee.

3. GOVERNMENT EMERGENCY ORDINANCE NO.34/2009

The Government Emergency Ordinance no.34/2009 published in the Official Gazette on April 14, 2009 has implemented changes in the area of corporate tax, rules of deductibility of expenses and VAT. However, the methodological rules applicable to the amendments were not published yet in the Romanian Official Gazette.

3.1 CORPORATE TAX

As a general rule, companies that have a profit tax liability which is less than the minimum tax applicable depending upon the level of turnover (see below), are required to pay the relevant **minimum tax** as follows:

Total yearly turnover (RON/EUR)	Yearly minimum tax (RON/EUR)
RON 0–52,000/ EUR 0-12,000	RON 2,200/ EUR 500
RON 52,001–215,000/ EUR 12,000–50,000	RON 4,300/ EUR 1,000
RON 215,001–430,000/ EUR 50,000–100,000	RON 6,500/ EUR 1,500
RON 430,001–4,300,000/ EUR 100,001-1,000,000	RON 8,600/ EUR 2,000
RON 4,300,001–21,500,000/ EUR 1,000,001-5,000,000	RON 11,000/ EUR 2,550
RON 21,500,001-129,000,000/ EUR 5,000,001-30,000,000	RON 22,000/ EUR 5,100
Above RON 129,000,001/ Above EUR 30,000,000	RON 43,000/ EUR 10,000

¹ The relevant amounts are expressed in EUR for information purposes only.

For the year 2009, the minimum corporate tax will be calculated as follows:

- For the period May 1 - June 30, 2009, the minimum corporate tax will be a sum representing 2/12 part of the total annual minimum tax,
- For the period July 1 - September 30, 2009, the minimum corporate tax will be a sum representing 1/4 of the total annual minimum tax,
- For the period October 1- December 31, 2009, the minimum corporate tax will be a sum representing 1/4 of the total annual minimum tax.

Micro-enterprises are also subject to the minimum annual tax, meaning that they shall due either the minimum annual tax mentioned above or 3% of the total amount of the turnover of micro-enterprises, whichever is the higher.

3.2 NON-DEDUCTIBLE EXPENSES

Fuel expenses incurred in relation to motor vehicles used for passenger transport with a maximum authorized weight of 3,500 kg and maximum 9 seats (including the driver's seat) **are no longer deductible** for corporate tax purposes and for the purpose of calculating annual income tax owed by individuals who carry out independent activities.

However, fuel expenses incurred for the following types of vehicles remain deductible:

- a) Vehicles used by the emergency services, and those used for breakdown assistance, security, courier services, driving to and from the workplace, as well as vehicles used by journalists while carrying out their duties;
- b) Vehicles used for transportation of passengers (including taxis);
- c) Vehicles used by sales agents and workforce recruitment agents;
- d) Vehicles which are rented as well as those used for driver training.

These new rules on deductibility apply from **May 1, 2009 to December 31, 2010.**

3.3 VALUE ADDED TAX (VAT)

From **April 14, 2009 to December 31, 2010**, the VAT related to the acquisition of certain types of vehicles (i.e. motor vehicles used for passenger transport with a maximum authorized weight of 3.5 tons and maximum 9 seats, including the driver's seat) and to fuel purchases for these types of vehicles is **no longer deductible**.

However, the following types of vehicles are **excluded** from the provisions of the Emergency Ordinance:

- a) Vehicles used by the emergency services, for breakdown assistance, security, courier services, driving to and from the workplace, as well as vehicles used by journalists while carrying out their duties;
- b) Vehicles used for transportation of passengers (including taxis);
- c) Vehicles used by sales agents and workforce recruitment agents;
- d) Vehicles used for rendering services against payment, including leasing;
- e) Vehicles used for trading purposes, i.e. those purchased for resale.

The above mentioned provisions related to the limitation of the VAT deduction right are not applicable to advanced payments for vehicles **made** prior to May 1, 2009, but delivered on or after May 1, 2009.

TAX SERVICES OFFERED BY GOBERT, FEST & PARTNERS ATTORNEYS AT LAW

Our tax service line includes the below mentioned areas:

- corporate income tax, international tax planning,
- direct tax consultancy services,
- taxation of private individuals,
- tax reviews, due diligences,
- reconciliation with authorities, legal assistance in tax disputes (tax litigation),
- other tax consultancy services.

CORPORATE INCOME TAX, INTERNATIONAL TAX PLANNING

- tax structuring, international tax planning services,
- overall tax consultancy services as regards cross-border transactions,
- reviewing the contracts and documentation of domestic and international transactions based on the effective tax regulations,
- tax consultancy services with regard to tax incentives,
- reviewing transactions on the basis of double taxation treaties,

DIRECT TAX CONSULTANCY SERVICES

- tax consultancy services as regards value added tax issues,
- elaborating the VAT consequences of unique business transaction,
- general tax consultancy services including customs issues.

TAXATION OF PRIVATE INDIVIDUALS

- personal income tax and social security contributions consultancy services,
- tax planning for private individuals, elaboration of tax efficient structures,
- tax consultancy services as regards both Hungarian and expatriate employees,
- optimizing the tax consequences of benefits provided by employers,
- providing assistance to private individuals in the preparation of tax returns, representation throughout proceedings in front of tax authorities,
- assistance in audits scanning the circumstances of fortune increases at private individuals, coordination of such audits, representation in front of tax authorities.

TAX REVIEWS, DUE DILIGENCES

- internal (in-house) audits as regards either every type or certain types of taxes, reviewing the settlement of tax liabilities,
- exploration of tax risks, providing assistance in the treatment thereof,
- elaboration of possibilities for tax optimization,
- analysis of the possible results of a Tax Authority audit,
- review of documentations prescribed by the effective tax provisions,

RECONCILIATION WITH AUTHORITIES, LEGAL ASSISTANCE IN TAX DISPUTES (TAX LITIGATION)

- legal representation in the course of proceedings carried out by state and local tax authorities,
- legal representation of clients in tax litigations including Supreme Court proceedings,
- reviewing documents created in the course of tax procedures (protocol, first and second instance decisions),
- review and preparation of necessary appeals and other requests.

OTHER TAX CONSULTANCY SERVICES

- general tax consultancy services covering all types of taxes,
- review of various contracts from taxation point of view,
- preparation of internal tax regulations, screening the existing ones,
- preparation of legal guidelines as regards unique, taxation topics.

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