

THE TAXSHOOTER

(December, 2010)

Apart from significant changes affecting the Hungarian legal and tax atmosphere, there is one fundamental change that has been shaping our firm's operation in the last few months. Ildiko Hadas became our firm's newest member as head of our tax team which was created in 2008.

When compiling the publication that you are about to read now, our tax team was striving to provide an overview of those recent tax law changes that might affect your enterprise not only now, but for a long period of time. While corporate entities are on one side of the coin, on the other there are private individuals who face new challenges due to recent tax law changes. In order to address the latter, our tax team launched The HR Shooter accompanying our regular Tax Shooter.

I truly hope that you find both publications useful as well as timely and join me at welcoming Ildiko in our professional team.



Dr. Arne Gobert

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CORPORATE INCOME TAX

- New corporate income tax rate structure

Corporate income tax base	Corporate income tax rate
0-Million HUF 500	10%
above Million HUF 500	19%

According to the current wording of the corporate income tax law, as of 2013 a 10% flat rate corporate income tax will be applicable for every corporate income tax payer.

The 10% corporate income tax rate up to Million HUF 250 is applicable from July 1, 2010 without any requirements. Before July, the 10% rate is applicable up to Million HUF 50 if the company fulfils certain conditions. If the tax payer is entitled to use the lower tax rate in the first or in the second half of 2010, the annual tax base should be divided according to the calendar days within 2010.

- The 30% withholding tax liability of foreign entities on certain income (interest, royalty, management services) is abolished.
- Following the last modification of the OECD Transfer Pricing Guidelines two new methods are introduced for determination of the arm's length price between related parties. The net margin method analyses the mark up realized on transactions related to expenses, revenues and assets. According to the profit split method, the combined profit arising from transactions should be split between related parties on an economically valid basis in the same way as independent parties would do. From now on, the companies can use all of the five listed methods in the law with appropriate argumentation.
- According to the law, capital gains deriving from the sale of reported shares available in the form of in kind contributions shall be exempted from tax, provided that all the conditions required for participation exemption are met.
- The foreign controlled companies reference tax rate will be reduced to 10%.
- Subsidies to Hungarian Damage Fund are treated as preferred sponsorship and the taxpayer can reduce the corporate tax base by 50% of the subsidy. This regulation is also applicable for the payment in 2010.
- 15 days after the European Commissions' approval, the possibility to claim tax allowance will arise up to the amount indicated in the sponsorship certificate, up to 70% of the tax liability, for sponsoring the national federation, affiliated sport organizations or supporting foundations of "visual" team sports (football, handball, basketball, water polo and hockey).

CRISIS TAX

In October 2010 a crisis tax was introduced on the retail, telecommunication, and energy sectors. According to the general idea of the government such tax obligation is payable by the companies affected for the years 2010, 2011, 2012. Moreover, the draft version of the state budget law applicable for 2011 includes additional non-identified tax liabilities for 2013, 2014 as well, which could be a replacement for the crisis tax.

The tax base of the crisis tax is the net revenue of the taxpayers, the related parties should totalize their tax base and pay the tax proportionally.

Retail activity - Tax base = net revenue	
HUF 0 - 500 million	0%
HUF 500 million - 30 billion	0.1%
HUF 30 billion - 100 billion	0.4%
From HUF 100 billion	2.5%

Telecom activity - Tax base = net revenue	
HUF 0 - 100 million	0%
HUF 100 million - 500 million	2.5%
HUF 500 million- 5 billion	4.5%
From HUF 5 billion	6.5%

Energy activity - Tax base = net revenue	
	1.05%

The law already stipulates a tax advance payment obligation with retroactive effect for 2010 to be fulfilled until December 20, 2010. The tax advance payment as of December 20, 2010 is based on the net revenue of 2009, except newly established entities in 2010 which should estimate the 2010 revenue for such advance payment. A final adjustment of the tax paid in 2010 can be made until May 30, 2011. However, in case of the newly established taxpayer, if the taxpayer has not paid at least 90% of the annual tax liability until December 20, 2010, a default penalty of further 20% may be levied on the remaining amount.

SOLIDARITY TAX AND EXTRA BANK TAX

- Modifications in the solidarity tax base and rate payable by credit institutions and tax rate modifications applicable to insurance companies as follows:

Taxpayers	Tax base	Tax rate
Financial institutions	Modified balance sheet total, several items will be deductible, e.g. those that include liabilities towards units abroad	Up to HUF 50 billion 0.15%, in excess thereof 0.53%
Insurance companies	Adjusted fee calculated from the premiums earned minus the insurance premiums	Up to HUF 1 billion 1.5%, up to HUF 8 billion 3%, in excess thereof 6.4%

- Provisions regarding tax base modifications in case of credit institutions seem to be important in case other states introduce bank tax. In order to avoid double taxation, it is appropriate to extend the deductibility of items from the tax base not only for local players in case of economic relations specified by current regulations (e.g. interbank lending), but also for economic relations with other EU member states.
- For 2011 the relevant tax return has to be submitted by March 10, 2011. The tax for 2011 has to be paid in four equal parts, i.e. March 10, June 10, September 10 and December 10.
- The new provisions regarding extra bank tax from 2011 gives credit institutions the option of paying a 30% tax on profit which would then lower their liability for a previously planned balance sheet levy. The amended legislation stipulates that the tax payable on profits by profitable lenders can be taken into account in the tax payable on assets.

LOCAL BUSINESS TAX

Changes related to construction activity

- Entrepreneur performing construction activity is defined by the law as a person for whom at least 75% of its turnover and values of (according to the records on the last day of the business year) its work in progress, semifinal products, and products altogether, results from construction activity.
- If construction activity, and the exploration and research of natural resources performed on a territory of a municipality lasts longer than 30 days but does not exceed 181 days, the activity is treated as temporary business activity and taxed accordingly. If such activities will presumably last longer than 180 days, the company is considered to have a permanent establishment on the territory of the local municipality and is obliged to register and pay local business tax from the first day of the activity based on the general rules.

New allocation methods implemented

- There are new allocation methods implemented for construction companies that could change substantially the current local business tax payment obligations.
- The telecommunication companies are required to change their current used methods of local business tax allocation. According to the new legislation, the method of the allocation is the address of the subscriber registered on the invoice.

Administrative changes

- Tax advance supplement for local business tax has to be declared till December 20 at the local tax authorities.
- As of June 29, 2011 submission, declaration, and payment of the local business tax has to be made at the municipalities' tax authorities (not at the state tax authority).

ACCOUNTING

The possibility of preparing simplified annual report is extended (e.g. branch office of companies having their registered seat abroad).

VAT

- The place of performance of cultural, artistic, scientific, educational, entertainment, sport, and similar activities depends on who the customer of the service is. If the service is sold to an entity subject to VAT, the place of performance of the activities above is the place where the buyer is registered for VAT purposes. If the buyer is not registered for VAT purposes the place of performance is the place where the activity is performed. However, the place of the performance of selling tickets for above mentioned events is the place where the event will take place.
- "The cooperation of VAT-exempt person" as a new instrument is implemented in the Hungarian VAT system as part of the Hungarian VAT legislation harmonization with the EU VAT system.
- The EU institutions and organizations are exempted from VAT in Hungary.
- Non-profit organizations are entitled under specific conditions to a VAT refund regarding their purchases financed by donations from abroad.
- The donation in kind for public purposes is exempted from VAT if the product or service was used previously by the donor as part of its activity subject to VAT.

- The local reverse charge system is extended with three new cases:
 - services provided by businesses under bankruptcy or similar insolvency procedures;
 - sale of carbon-dioxide emission quotas;
 - sale of used accumulators and batteries.

Changes in VAT reclaim of foreign entities

- The filing deadline of VAT reclaim for VAT paid in Hungary in 2009 by entities registered within the EU is postponed until March 31, 2011. The reclaim should be filed at the home country's Tax Authority. If the original request was refused for whatever reason, it is advisable to review again the case because it is possible to file a new reclaim for the same invoices. Please note that the Hungarian Tax Authority communicates its possible questions and requests regarding reclaims in Hungarian. To avoid any misunderstanding or miscommunication, it would be useful to nominate a Hungarian contact person in the process who is able not just from the language but from the professional point of view to finalize the case successfully.
- Third country entities can file their Hungarian VAT reclaim at any office of the Hungarian Tax Authority addressed to the "Kiemelt Adózók Igazgatósága".

EXCISE DUTY

- duty changes regarding private distillation;
- duty rate changes regarding beer and liquor produced by contract distillation;
- duty base and duty rate changes regarding tobacco products, and liquor produced by private distillation.

STAMP DUTY

Stamp duty exempts:

- As of August 14, 2010 lineal ascendants and descendants are exempted from donation and inheritance stamp duty. Such exemption is applicable to every kind of asset, real estate, share, quota, etc.;
- As of August 14, 2010, between related parties, the transfer of shares, quotas in a real estate holding company is exempted from stamp duty;
- As of January 1, 2011 companies that take over a service line will be exempted from stamp duty under certain conditions. Such exemption is applicable if the service line is transferred within a year from the stamp duty imposed on the agreement;
- Starting from January 1, 2011 the administration period of stamp duty determination will rise from 30 days to 60 days from the time of the document's arrival at the tax authority.

In case the ruling of sport activity subsidy will be accepted by the European Commission, the following favorable changes will enter into force as of 15 days after approval:

- the sport field transfer is exempted from stamp duty if the purchaser guarantees that he will not transfer the property for a period of 15 years and will use it for sport purposes.
- exemption from stamp duty for the purchase of plot which can be transformed into a sport field. Such exemption can be used by special sport organizations and sport federations if the construction is finalized within 4 years.

PERSONAL INCOME TAX

(Only in bullet points. If you are interested in the details, please read our HR SHOOTER published together with this TAX SHOOTER)

- 16% flat rate is introduced to all types of income (consolidated tax base, interest income, dividend income, etc.);
- "Supergross" will be abolished from 2012 within two years;
- New family allowance method is introduced;
- Tax credit will be abolished from the system in phases;
- Income bearing no tax burden is abolished;
- Structural reclassification of non-cash payments;
- Implementation of "Tax statement" for personal income tax declaration.

SOCIAL SECURITY

(Only in bullet points. If you are interested in the details, please read our HR SHOOTER published together with this TAX SHOOTER)

- Employees pension contribution increased by 0,5% up to 10%;
- Monthly contribution of non-insured individuals raised to HUF 5 100;
- Structural changes in social security administration requirements of foreign employees subject to the Hungarian social security system;
- New rules for labor hiring from abroad;
- Two year limitation for exemption from the Hungarian social security system for third country nationals assigned to Hungary.

NAV (NEMZETI ADÓ- ÉS VÁMHIVATAL)

NAV - National Tax and Customs Office is the new integrated central state audit entity.

RULES OF TAXATION

- As of August 16, 2010, the individual does not have to register for renting out the property and does not have to request a VAT number, if not choosing VAT payment obligation.
- The companies have to register those places of the business activity that are not included in the act of incorporation and are not declared at the Trade Registry, but can be considered permanent establishment (based on the provisions of the Rules of Taxation).
- The taxpayer has no possibility to finish the self revision that is in progress at the day of starting the tax authority's audit.
- At the request of the taxpayer, extraordinary audit can be ordered based on new evidence, if the taxpayer did not know about such previously.
- If the taxpayer has more than one representative, the tax authority will deliver documents only to the one appointed by the taxpayer as representative.
- Related parties, which can not be considered companies (i.e. private individuals), shall apply the rules of transfer pricing.
- The taxpayer may be fined with an amount of HUF 500 000, if the published annual report or the simplified annual report does not meet the requirements of the Accounting Act.

CONSTITUTIONAL COURT ACT

The competence of the Constitutional Court has been narrowed:

- it may only review and annul laws regarding, among others, taxes and stamp duties if those are in breach of certain, expressly listed, basic rights;
- however, the right to property, as one of the main rights based on which tax-related regulations have been challenged so far, has not been included into such list.

Can we be at your assistance?

In case any employment related questions may affect your company and you have additional inquiries in this respect, please feel free to contact us:

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