Tax&Legal Highlights

Hungary

The government decree on the development tax incentive has been amended

We would like to draw your attention to the fact that on 13 December 2017 the amended government decree No. 165/2014. (VII. 17.) on the development tax incentive (Government Decree) was published, which includes several important modifications partly due to compliance with the EU regulations.

According to the modifications, as of 14 December and 1 January 2018:

- In line with the 2017 November amendments of Act LXXXI of 1996 on Corporate Tax and Dividend Tax (CIT Act), the rules to facilitate product diversification of large companies in the Central Hungarian region and new procedural innovation are introduced by the Government Decree.
- The calculation of grant content is simplified.
- The options of withdrawing the application of tax incentives and the decrease of the incentive amount at present value are introduced (this is important to avoid notification to the EU Commission in case of projects that qualify as one construction project).

- The term ‘relocation’ is introduced for the moving of activities from the territory of other parties to the Treaty on the European Economic Area, even in case of the termination of as few as 2 jobs in the original facility.
- The taxpayer shall make a statement that no relocation was performed on group level in the two calendar years preceding filing the application or notification, and he must undertake not to effect such relocation for two calendar years following the completion of the construction subject to the incentive.
- In case of tax debt recorded at the tax and customs authority or penalties on the employment of unreported employees, the taxpayer will not lose eligibility for the tax incentive, only the option to exercise the incentive in the given year.
- New definitions are introduced (obligatory operation period, independent third party.)
- The term ‘changes in the circumstances’ is extended to include cases where the taxpayer changes the place that was indicated in the application or notification as the project location.
- The provisions on the maintenance of assets is also modified: persons other than the taxpayer are also allowed to operate them.
- In case of projects aimed at job creation, the time while the job was vacant is also added to the obligatory operation period.
- It is now possible to file the application and notification electronically, and paper based filing will be cancelled from 30 June 2018.

These provisions are applicable to grant applications and notifications filed after the effective date.

Should you need more information of the development tax incentive or other state subsidies, please do not hesitate to contact our experts.

What are the criteria to consider when providing the employer's support for housing purposes

The new cafeteria period is commenced on 1 January 2018; therefore you are advised to consider pros and contras for the various cafeteria elements. Employees tend to decide based on the value of the net benefit, but employers should also take other aspects into consideration. We highlight the following:

In our experience employer’s tax free housing support is a highly popular type of benefit among both employers and employees even though noncompliance with the relevant legal regulations may have serious implications. Let us address some of these.

First the employee is liable to certify his housing conditions by providing the employer with all the documents and certificates to the employer. It is, however, the employer’s responsibility to review and judge the employee’s application for the tax free benefit – either in house or involving a third party professional.

Employers shall take care to hold certificates issued by the credit institution on the disbursement of the support by 31 May following the year of

disbursement in case of apartment purchase and 31 May of the second year following disbursement in case of building, extension, modernisation and accessibility projects.

If any of the above is missing, the benefit qualifies as employment income with the tax (and contribution base) being the amount of the disbursed benefit plus 20%. The above are forfeit deadlines, i.e. if they are missed, in case of a potential tax audit the tax authority is likely to insist on reclassifying the benefit as taxable income.

With regard to the popularity of this benefit, such potential reclassification of a high number of employee benefits may carry a significant tax risk for both the employer and the employees. The question is who is responsible for noncompliance. It is important that employees should be well aware of legal implications at the time of opting for this element, and know that they should make all efforts to provide the necessary documents in a timely manner. The employer may also make a mistake, which – in addition to the employer's tax liabilities – could adversely affect employee confidence due to the large subsequent tax burden, administrative workload and high personal income tax and contribution liabilities.

In the light of the above, we recommend that in case of providing the tax free employer's housing support the employers should review their practice in time, when developing or reviewing the cafeteria, but before 31 May at the latest, and take care to avoid adverse tax implications.

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