

## Tax Alert

VAT reclaim, reverse charge and  
intensified tax audits



# VAT reclaim, reverse charge and intensified tax audits

**The aim of this Newsletter is to inform our clients of changes to the VAT Act and intensified tax audits that can be expected.**

## Amendment to the VAT Act

The Hungarian Parliament has adopted changes to the VAT Acts (Act LXXIV of 1992 on Value Added Tax ("Old VAT Act") and Act CXXVII of 2007 ("New VAT Act")), with a view to harmonize Hungarian law with EU law and to introduce changes required by the European Court of Justice.

The new rules repeal section 186 (2)-(4) of the New VAT Act which require that invoices related to a VAT reclaim are financially settled. The new rules also provide that those provisions, as well as section 48(7) of the old VAT Act may not be applied in tax audits pending when the changes become effective (i.e. the day following promulgation of the new law) or in subsequently initiated audits.

The new law also regulates VAT reclaim procedures related to invoices that have not yet been financially settled and therefore the VAT content of which could not be reclaimed. Taxpayers may decide to exercise their right to a refund by submitting a specific refund request (by 20 October 2011) or making the request at the time the regular VAT return is filed (within the statute of limitation). The tax authorities have 30 or 45 days to refund the amount, depending on whether the amount is under or above HUF 1 million, respectively.

Under the revised rules, the amount to be reclaimed in the request or the VAT return is the amount that was last disclosed by the taxpayer as tax on purchases not yet financially settled in the tax return due and filed before the effective date of the new rules (i.e. the August return for those required to file on a monthly basis).

In addition, taxpayers can request the re-audit of their VAT returns for periods preceding the effective date of revised rules if they were subject to penalties and/or default interest under provisions in the Old VAT Act or the New VAT Act that are repealed by the new law. Requests for re-audit must be made by 20 October 2011. A taxpayer can request a re-audit even if it is not submitting a specific refund request, but no audit will be available where the previous resolution of the tax authorities was referred to a court.

The new law does not address whether the tax authorities are required to pay interest on the tax penalties and default interest cancelled in a repeated

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„Taxpayers may decide to exercise their right to a refund by submitting a specific refund request by 20 October 2011”

audit or whether the taxpayer must be paid interest if it delayed its VAT refund request because of the rule stipulating financial settlement.

### Practical implications

The deadline for filing the specific refund request or for initiating a repeated tax audit is extremely short. Therefore, previous final resolutions issued by the Hungarian tax authorities must be reviewed to determine whether a tax penalty and/or default interest was imposed specifically due to purchases that were not paid. Furthermore, taxpayers should be alert to intensified tax inquiries into the legality of reclaimed amounts and be aware that tax penalties may be imposed based on a request if the amount is, for example, not adequately supported by invoices.

### Taxes on agricultural products

Based on information published by the government, the range of products and services subject to the reverse charge under the 2007 VAT Act is expected to increase. In an effort to prevent tax evasion, there are plans to introduce the reverse charge mechanism for certain agricultural products falling within the scope of the VAT regime. If the proposed modifications are enacted, VAT will be payable by the recipient of the product, rather than the supplier.

Pursuant to the 2006 EU VAT Directive (Council Directive 2006/112/EC), EU Member States are authorized to introduce the reverse charge for certain products and services, but not for agricultural products. As a result, Hungary must initiate a “derogation procedure,” under which the EU can grant permission for the expanded application of the reverse charge. Romania introduced reverse charge taxation for certain agricultural products, but the derogation procedure at the competent EU body took approximately one year and the EU only permitted the use of the reverse charge for certain agricultural products for the period 1 June 2011 through 31 May 2013.

### More intensive tax audits

Taxpayers should be prepared for intensified tax audits for Q4 2011, since the National Tax and Customs Authority aims to collect an extra HUF 40 billion through VAT audits. The tax authorities plan to achieve this goal by increasing the frequency and efficiency of VAT audits, which may result in additional administrative burdens and payment obligations for taxpayers.

Based on available information, the need for intensified audits may be justified by the fact that, before September 2011, only 55% of the targeted VAT revenue (in the act on the state budget) was collected. To improve collection, the tax authorities intend to comprehensively review invoicing practices, supply chains and the VAT treatment of such chains, with a particular emphasis on content and form. The intensified focus is likely to be on VAT deduction rights, the appropriate application of direct and reverse charge taxation, chain transactions and intra-community sales. Due to more frequent tax audits, the number of judicial reviews of resolutions is also expected to rise. Taxpayers should be prepared to defend their transactions and positions by having sufficient documentation and supporting administrative and judicial decisions.

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