

Tax News+



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Below you will find the tasks and potential issues arising from key tax law changes of the past month and recent weeks. We would be ready and glad to discuss with you any of your company specific issues.

Personal income tax

Registration obligation of nonresident individuals on secondment in Hungary

Amendment to the Rules of Taxation Act that apply as from 1 January 2012 require the registration of an individual seconded to Hungary to provide dependent personal services and who qualifies as a nonresident on the day before he/she commences activities in Hungary or enters the country. (The rules requiring the discontinuation of activities to be reported remained unchanged so it must be presumed that the obligation to "de-register" applies to all activities carried out by individuals subject to the registration requirement who are taxable pursuant to a tax treaty or the Personal Income Tax Act.)

The registration within 30 days of the commencement of activities or employment giving rise to a change in personal income tax obligations creates issues, such as whether activities that started before 2012 or those recurring periodically during the year must be reported. As a result of consultations with the authorities, we have learned that the registration obligation applies only to activities commencing after 1 January 2012.

The Hungarian host company must carry out the registration and will be subject to a fine up to HUF 500,000 per employee for failure to report. Affected companies should ensure they are in compliance with the registration requirements.

Workplace catering

As from 2012, non-wage benefits include a monthly amount of HUF 12,500 provided to employees to buy meals in workplace canteens that qualify as "workplace catering." According to the tax authorities, catering services qualify as workplace catering where the employer provides the

employees with printed or electronic vouchers that can be used in a canteen operating at the employer's place of business and serving only the employer's employees. Canteens operated at the employer's place of business but serving other individuals as well do not satisfy the criteria for workplace catering and, therefore, disqualify the employer's catering services as non-wage benefits, which are then subject to a 30.94% personal income tax and health tax obligation. This raises the question of the tax implications of catering for non-employed security, cleaning and other personnel, which will need to be agreed with the tax authorities on an individual basis (e.g. in a request for a binding ruling).

Anticipated wage increase

Simultaneous application of the government decree on the wage increase expected in 2012 for the Preservation of the Net Value of Wages and Salaries and the Eligible Amount of Non-wage Benefits, as well as the provisions of the Act on the Social System Tax, raises a number of interpretation issues.

Specifically, it should be noted that:

- The tax base for purposes of the wage increase and the tax benefit base for the social system tax are different (e.g. cost reimbursements);
- Tax benefits are available retroactively for any month in which the expected wage increase takes place;
- Accurate calculation is recommended for the expected wage increase and the desired tax benefit with respect to the tolerance rule (i.e. special case of unfavourable tax implications);
- The expected increase in performance-based salaries, wage supplements and commissions must be determined carefully; the increase will not be affected by the changing of income other than the personal base wage and regular wage supplements;

- As from 2012, employers are no longer required to compensate employee wages; however, unilateral measures relating to unpaid leave (e.g. reporting of different salary in payroll records) will no longer be sufficient; the wage increase must actually be carried out pursuant to the relevant government decree.

Value added tax

Deductible VAT on lease of company car

As from 1 January 2012, VAT is deductible on open-end car lease payments. However, the treatment of the personal use of passenger cars is unclear. If a company allows its employees to use passenger cars for personal purposes free of charge, the VAT on the lease payment charged on the company may be deducted proportionately from the corporate income tax base of the company with respect to the tax-free use of cars for business purposes. The VAT on the proportionate part of lease payments due for personal use, however, is nondeductible. This raises the question of how – for practical purposes – VAT on lease payments should be allocated between business use and personal use and what type of report would be appropriate for demonstrating a use for business purposes.

Companies requiring consideration from employees for the personal use of a company car can fully deduct the input VAT previously charged on the lease payment. In this case, however, it should be noted that allowing employees to use a company car qualifies as a gainful activity on which taxpayers are required to issue invoices and charge input VAT. The question of how to determine the tax base of such services, given that the service is provided to non-independent parties remains yet to be answered.

Joint and several liability

In December 2011, the European Court of Justice (ECJ) issued a decision on the imposition of third party joint and several liability in VAT cases (Case No. C-488/10). According to the ECJ, the Sixth VAT Directive does not allow EU member states to make third persons (specifically warehouse keepers other than the customs warehouse) unconditionally jointly and severally liable for the payment of outstanding VAT if such persons acted in good faith and were not at fault or negligent. However, the ECJ held that it would be permissible to hold a person liable for tax if it had not taken every reasonable step to

ensure that the transaction did not involve fraud or tax evasion ‘

The decision may be important in Hungary since many group companies have refrained from registering as a single VAT group because of joint and several liability.

Tax administration

New state budget accounts

Rules on disbursements to the state tax authorities have changed; specifically, the tax types and the tax authorities' account numbers have been divided into "withheld" and "payer's" tax/contribution.

Tax and contribution payment obligations incurred for periods after 1 January 2012 must be declared and paid according to the tax types indicated in the new account registry.

Obligations incurred for periods before that date are to be declared and paid to the pre-2012 accounts. This rule applies to Form No. 1108 prepared for December 2011 (which had to be filed by 12 January 2012), as well as to self-revisions submitted for periods before 1 January 2012 and subsequently filed returns. Taxpayers should ensure that they cross-check the account number and tax type code whenever payments are made to the NAV.

E-filing of payment facility requests

On 1 January 2012, the tax authorities announced that taxpayers required to prepare summary reports of employers', payers' and VAT returns may only submit a request for payment facilities (i.e. extension and instalment payments) electronically (including any requests to modify or revoke requests). The tax authorities, however, will continue to issue their rulings in hard copy.

Innovation contribution

The direct costs of R&D activities performed using own resources, as well as the costs of R&D services used in 2011 in connection with own activities are, despite the amendment, deductible for the last time from the contribution payment obligation for FY 2011. If such deductible items reduce the gross contribution obligation for FY 2011 to zero, the interim advance on the contribution obligation may be declared in the tax filing as zero.

Grant opportunities

“Supplier programmes” consultation

The consultation on grant opportunity No. GOP-2012-1.3.1/E "Supplier programmes" has come to a close and the resulting grant opportunities will soon be announced.

The programme will invite (mainly family) enterprises with a maximum of 500 employees (together with partner and related companies) to apply for non-refundable grants in the amount of HUF 25-HUF 500 million (and allow high-performer companies to apply more than once). Requirements to qualify include that the applicant's products are not sold directly to end consumers (retail trade), the applicant must have experience in the supplier business (e.g. completed five financial years) and the applicant potentially must be capable of acquiring new customers and markets. Applicants also must undertake various obligations and could lose the grant (or have to repay it) for default on these obligations.

This grant opportunity will be available in 2012 and 2013 with a budget of HUF 27 billion for projects to be implemented outside the Central Hungarian region (Budapest and Pest county).

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