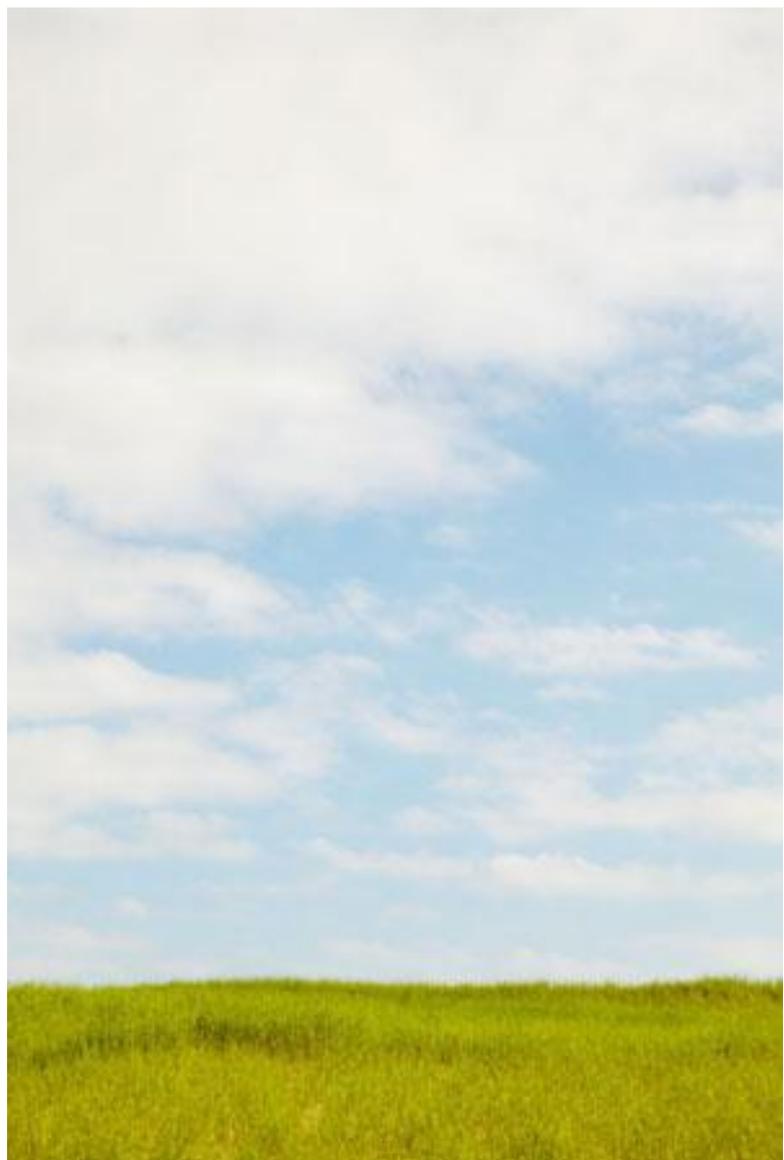


## Tax News+



# Tax News+

**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.**

## Value added tax

### Sufficiency of international shipping documents

A verdict by the Hungarian Supreme Court (the Curia) passed at the end of last year raises the question of whether international shipping documents (CMRs) bearing the signature and stamp of the seller, the forwarder, the buyer and the dispatcher and the licence plate number of the transport vehicle will be treated by the Tax Authority as sufficient evidence in proving that the goods of a Hungarian producer or vendor has indeed been delivered to another EU Member State.

As a practical implication of the verdict, the question is when the Tax Authority regards the forwarder's consignment note to be a more credible document than an internationally accepted delivery document if the two documents are inconsistent (e.g. if delivery has not taken place according to the consignment note but is supported by a CMR), and what bona fide taxpayers may do to further support their Community sales.

The verdict has particular relevance for companies engaged in the trade of certain agricultural products and encourages them to act more carefully, considering the fact that, based on the tax audit guidelines, this year the Tax Authority will pay special attention to the audit of agents involved in the wholesale of agricultural products and wholesalers of grain, animal feed, livestock and meat products. The highest level of risk is borne by taxpayers whose goods are transported from their site at the order of a third party buyer since such taxpayers will not possess any other document apart from the CMR which would support delivery.

### Obstacles to switching to more frequent VAT returns

Under rules that apply as from 1 January 2012, the tax authorities may, until the end of the tax year, allow a more frequent submission of VAT returns, particularly where the rate of previously charged deductible VAT on the taxpayer's purchases is higher than the recharged VAT rate and if the taxpayer completes a construction project. However, permission may be denied if any of the conditions set out in the regulations apply (e.g. frequent change of registered office, collection procedures resulting from tax debt of at least HUF 25 million, default fines levied due to the obstruction of an audit, etc.).

As from 1 March 2012, the conditions that will result in a denial will be reviewed for the two years preceding the submission of the request, and the conditions that may be cited by the tax authorities as reasons for denial of more frequent VAT returns are changed. Failure to comply with the filing, reporting and data supply obligations and the additional limitation for companies established during the past two years have been eliminated from the conditions.

It is important to note that the denial of a request for more frequent submission of tax returns may lead to financing problems for companies. Cases where the tax authorities settle the company's tax debt by transferring excess payments from the company's balance with respect to another type of tax are also regarded as collection.

## Tax administration

### Main audit areas for 2012

An announcement detailing the 2012 objectives of the National Tax and Customs Authorities was issued on 31 January 2012 and includes the main audit areas and the proposed figures for each type of audit.

Particular focus will be on newly established companies whose registered office is provided by an office service company, companies that realise significant revenue after establishment and companies declaring significant amounts of payable VAT and nearly identical amounts of deductible VAT. The risk factors considered by the National Tax and Customs Authorities will include cases where a company acts primarily in a transfer role, tax minimisation, chain billing, and companies with identical registered offices, owners or executives that are in a business relationship with each other.

The main activity categories subject to audit include forwarding, warehousing, catering and labour market services. The authorities also are preparing for future tax audits by collecting data; main target areas will include, legal, accounting and tax advisory activities, outpatient, dental and other health care at private clinics, as well as retail trade.

Taxpayers most likely to be selected for audit include those with high revenue and that have a significant level of risk, retail chains and taxpayers involved in the leasing of passenger cars and other vehicles. The number of pre-disbursement audits also will increase. Corporate income tax and dividend tax audits will focus on related party transactions and transfer pricing. Other audits are expected in an effort to combat illegal employment, particularly in the agricultural and construction industries and companies involved in forwarding.

Considering that the tax authorities need to supply more than 92% of all government revenue (i.e. HUF 10,500 billion for 2012, about HUF 1,000 billion more than last year), adequate preparation for audits is an imperative.

### Selection of large taxpayers

The rules regarding the selection of large taxpayers and the definition of a group of taxpayers with the highest tax performance have changed. Under the new rules, which apply as from 16 February 2012, large taxpayers include credit institutions and insurance companies operating as companies limited by shares, government agencies and taxpayers whose tax performance exceeded HUF 3.25 billion with the exception of private entrepreneurs and individuals under the Personal Income Tax Act.

The category of taxpayers with the highest tax performance also has been changed and now includes companies with a tax performance of at least HUF 690 million or, if declaring VAT on a monthly basis, HUF 140 million. The rules for calculating tax performance were modified as well: for instance, the categories included in the calculation now include excise tax, registration tax, energy tax and the environmental product charge, which means that determining a taxpayer's classification under the current rules also requires the recalculation of tax performance.

### Reporting of uncertain tax positions abolished

The new legal category of uncertain tax positions, introduced at the beginning of 2012 is abolished as from 1 March 2012, by way of an amendment motion of the government party committee. Under the amendment, all reported cases are cancelled and fees paid will be refunded by the tax authorities within 30 days from the effective date of the amendment.

### Legal outlook

As explained in our previous legal newsletter, an omnibus act promulgated in late 2011 significantly amended company law and company registration rules. A quick reminder: most of the amendments apply as from 1 March 2012. It also should be noted that on 15 February 2012, the Ministry of Public Administration and Justice published the draft version of the new Civil Code, which is expected to enter into force in 2013.

## Disaster management contribution

The disaster management contribution is a new tax type introduced as of 1 January 2012. Under the regulation, plants dealing with hazardous materials and operators of plants where the level of hazardous materials is below a certain threshold, as well as business entities involved in the storage, production and processing of hazardous materials as specified in a separate regulation dealing with the road transport of hazardous materials are required to pay, under this title, 0.1% of their net revenue for the year derived from hazardous activities and associated with the hazardous materials stored, produced and processed during the year.

The statutory regulation and the related decrees suggest that the range of entities which may be subject to this new type of tax is extremely wide. However, the wording of the regulation raises a number of questions in terms of interpretation, including the range of entities covered, the legal title and activities for which the contribution is payable and the basis for the calculation of the relevant taxable income. As a main rule, the regulation designates the net revenue for the year derived from hazardous activities as taxable income for the purpose of contribution payment, yet no detailed guidance is provided as to what should be considered net revenue derived from such activities. In the event that the amount of contribution payable cannot be calculated in a supportable manner, the entire net revenue of the taxpayer must be considered as taxable income for the purpose of contribution payment.

In addition to the payment of contribution, taxpayers are required to comply with several administrative obligations. Amongst others, companies are required to report to the disaster prevention authority by 31 March 2012 by providing the required information specified by the regulation using the form issued by the authority. Failure to comply with the reporting obligation will result in sanctions being imposed.

## Grant schemes

### „Support for workplace education for large enterprises” – general application conditions

Two components of the grant program entitled „Support for workplace education for large enterprises” (code number: TÁMOP-2.1.3.C-12) will be published during the first half of March 2012 (one for the projects in the Central Hungary region and the other for projects in all other regions) as the public discussion phase of the project has been completed. Although the final text of the grant program is not yet known, no substantial changes to the rules specified in the course of public discussion are expected.

As part of the grant program large enterprises may apply for non-refundable grants of HUF 10 million to HUF 150 million with respect to internal or external (third-party) training courses organised for their employees. Up to 100% of training costs may be awarded through a so-called de minimis grant if the applicant was not awarded more than EUR 200,000 in de minimis grants during the last two closed fiscal years (grant amounts applied for as part of this grant program included). In other cases, grants amounting to 60% of the costs of general training courses and 25% of special courses can be applied for.

The grant program is particularly attractive since, in addition to the costs of education (which includes the cost of books and notes required for training, exam fees and fees charged for the issue of certificates), it provides salary support for participating employees for the duration of the training, and expenses related to accommodation, catering and travel can also be accounted for.

It is important to note that for technical, language, business operation and IT courses, third-party service providers must hold a FAT certificate or, if a course is organised as part of internal training, the applicant must possess an internal training plan.

Given the relative shortage of available funds and the high level of interest expected as a result of the attractive conditions, entities will need to act quickly to secure funding.

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