

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.

Practical issues relating to tax declarations for environmental product fee

Amended environmental product fee rules that apply as from 1 January 2012 require taxpayers to identify (using the catalogue of packaging codes) and maintain a record of the packaging of products for which they may incur product fee liability. As a result, liability to the environmental product fee must be calculated for each type of material, and using the packaging codes, taxpayers must be able to identify the purpose of each specific packaging (e.g. materials, tools, etc.), the materials the packaging is made of (e.g. plastic, wood, metal, etc.), the basis on which liability to the fee arises (or does not arise) and whether the packaging is for a single use or reusable.

The mandatory record-keeping system makes identifying and declaring products subject to the environmental product fee more difficult, particularly where, for instance, a taxpayer purchases goods and packaging from domestic and foreign sources and has a contract with the domestic supplier of a certain type of packaging. Taxpayers should review their record-keeping systems and develop management systems to facilitate the automated preparation of declarations under the regulations.

Innovation contribution

A number of important changes were made to the innovation contribution rules for 2012, including changes to the scope of taxpayers covered.

Small and micro enterprises are not subject to the innovation contribution. Until 2011, related parties were not taken into account in determining this

status because companies were classified based on their own figures. However, as from 2012, associated and related parties, including foreign group companies, also must be considered for taxpayer classification purposes. When classifying companies on the basis of the number of employees and financial indicators, the aggregate figures of the group must be used as provided in the act on small and medium-sized enterprises (if consolidated financial statements are available, the figures contained therein should be used). Different calculation methods apply depending on whether the taxpayer is subject to the innovation contribution for the first time or whether it has been paying the contribution.

The revised innovation contribution rules bring more companies within their scope, so entities should review their situations to determine whether they are subject to the tax.

R&D qualification procedure

According to a new chapter on the *Classification of research and development activities* added to Act CXXXIV of 2004 on Research and Development and Technological Innovation, as from 1 February 2012, taxpayers may request (once the new regulations have entered into force) the Hungarian Intellectual Property Office to determine:

- Whether the activity meets the criteria to be regarded as an R&D activity;
- The percentage of basic research, applied research and experimental development represented in the project; and
- Whether the project qualifies as the company's own R&D activity.

The request for a determination by the Intellectual Property Office must be submitted in writing or

electronic format and a fee paid. The request may be made for future projects and the determination is binding on the tax authorities. It is important to note that if the subject matter, objective or scope of a project changes, it will be regarded as a new project and a new request may need to be submitted. A request may cover only a single project, which raises the question of what is regarded as one project and who should be designated as the requester in the case of joint projects. It should be noted that all references to the Frascati Manual, a source generally used for qualifying R&D projects were removed from Hungarian tax law as of 1 January 2012, although the Intellectual Property Office has announced that it intends to issue a methodology guide defining the criteria for qualification.

Grant applications

Stricter deadlines for electronic notices

An amendment to Government Decree No. 4/2011. (I. 28) that applies as from 31 March 2012 introduced stricter rules on when notices delivered electronically to grant applicants are deemed to be issued.

Section 120 (2) of the decree provides that "if the receipt of a message received through the e-administration interface for grant applications (EMIR) in connection with the grant application/contract is not acknowledged within seven days from the date of sending, the document shall be deemed to be delivered (unless proven otherwise)." Thus, applicants have seven days to accept messages received through the EMIR interface; otherwise, the message will be deemed to be delivered. Applicants should check their EMIR accounts regularly because, in certain cases, failure to meet a deadline can constitute a breach of contract.

Obligation to prove the incentive effect of state aid granted to large enterprises

The European Commission recently advised several EU member states (including Hungary) that the Commission intends to start investigating whether state aid received by large companies

through schemes co-financed by the EU (GOP, KMOP etc.) or domestic schemes (e.g. training grants) have a so-called *incentive effect* on the completion of the relevant project. This Commission investigation will include a review of whether one or more of the following criteria are met by the aid: a material increase in the size of the project/activity due to the aid, a material increase in the scope of the project/activity due to the aid, a material increase in the total amount spent by the beneficiary on the project/activity due to the aid, a material increase in the speed of completion of the project/activity concerned, or, as regards regional investment aid, that the project would not have been carried out in the region in the absence of the aid.

In addition to construction projects (capacity increase projects), beneficiaries (project owners) involved in R&D or training projects (not including projects carried out using *de minimis* aid) are likely to be approached by the Intermediary Body or the Sponsor and asked to provide evidence of the *incentive effect*. For recently published grant schemes, this obligation is included in the call for applications. The existence of the *incentive effect* may be examined with respect to projects without a grant contract, as well as for projects where the grant contract already has been concluded.

To demonstrate the *incentive effect*, documentation must confirm that without state aid the project would not have been carried out at the same scale or in the same activity, or would have been carried out from a smaller budget or would not have been carried out at all. This analysis must be prepared before grant application is submitted. The analysis also may need to be supported by internal corporate documents (e.g. an on-site inspection).

Only so-called transparent companies are entitled to government grants (e.g. state aid or schemes co-funded by the EU) as from 1 January 2012

As from 1 January 2012, Hungarian government grants may be provided only if the entity submitting the application (in case of applicants regarded as legal persons or other organisations without legal personality) qualifies as a transparent organisation and the following requirements are met:

- Information on the ownership structure and actual owner of the entity is publicly available;
- The entity is resident in an EU/EEA member state, an OECD member state or a state that has concluded a tax treaty with Hungary; and
- The entity does not qualify as a controlled foreign company under Hungarian tax law.

The above criteria also applies where a non-governmental legal entity or business entity without legal personality that has direct or indirect ownership, control or voting power of more than 25% in a non-governmental legal entity or a business entity without legal personality.

According to a recent statement of the National Development Agency, the rules concerning transparent organisations must be applied to all grant schemes published after 1 January 2012, even if the call for applications, guidelines or grant contract does not include conditions relating to transparent organisations or does not reference the rules. The statement also confirms that the requirements listed above do not apply to grant contracts that were concluded and took effect before 1 January 2012.

Although the majority of grant schemes require applicants to include information on the direct owner of the applicant and the level of ownership of the direct owner in other entities, it is not impossible that information on the full ownership structure will have to be provided, in spite of the fact that the authorities' practice in this respect is not yet established.

Legal outlook

We would like to draw your attention to uniformity resolution no. 1/2012. PJE recently adopted by the Curia. In its resolution aimed at unifying legal procedures, the Curia ruled that **Hungarian financial branch offices of foreign companies** involved in the financial sector and domiciled in an EEA state (under Act CXXXII of 1997 on Hungarian Branch Offices and Commercial Representative Offices of Foreign-Registered Companies) **are not in a capacity to be parties to legal proceedings.**

The reasoning of the resolution points out the differences between branch offices established under the general rules and financial branch offices, arguing that both types of branch office are entities without legal personality which are registered in the company register, but (unlike general branch offices) financial branch offices act on behalf their founders and, as a result, are not in a capacity to be parties to legal proceedings. Without such a capacity, financial branch offices may not act as litigant parties, which means that they cannot file lawsuits, are not suable, and may only represent their founder in the course of the proceedings.

However, in our opinion, the above resolution raises further issues. The above resolution may also prove useful in clarifying issues concerning the capacity of financial branch offices to act in administrative proceedings and the "general" legal capacity of financial branches.

News from around the globe

If you are interested in tax news from Austria, please see Deloitte Austria's tax newsletters, which are available in German at <http://www.deloittetax.at/>. In addition to the monthly newsletters, the website features a news feed with regular updates, and visitors can sign up to receive the newsletters via email.

If you want to stay up-to-date on global tax matters, you can find interesting information on [cross-border taxation](#), [employee mobility](#) and [indirect taxes](#) on the [global website](#).

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