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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.

Default fine levied in case of non-compliance with the transfer pricing-related reporting obligations

As we have already informed you, the rates of the default fine levied in case of non-compliance with the transfer pricing-related reporting obligations increased with effect from 1 January 2012. In addition to the default fine of up to HUF 2 million levied on the first instance of non-compliance (the rate under the previously effective regulations), the regulations stipulate additional fines of up to HUF 4 million per report for repeated violations with effect from 1 January, while repeated failures relating to the same report are subject to a fine of up to four times the amount of the default fine levied the first time.

However, there have been a number of uncertainties surrounding the practical implementation of the amendments containing these more stringent regulations. One of the questions raised was what qualifies as repeated non-compliance in connection with the same report and what is the extent of the default fine which can be levied for repeated non-compliance where such non-compliance is revealed after 1 January 2012 and the due date of preparation is before/after 1 January 2012.

In response to a request for a position statement the tax authority pointed out that repeated non-compliance includes cases where a taxpayer repeatedly fails to comply with the reporting obligation in respect of one or more transactions carried out based on a related-party contract. Since a separate report must be prepared for each transaction, the tax authority's position implies that a contract may serve as the basis for more than one transaction, which means that it is the number of transactions and not the number of the underlying contracts that is relevant for the purpose of determining whether repeated non-compliance applies. According to the tax authority's position in connection with the default fine levied in case of repeated non-compliance, the due date of the report is the decisive factor; this and the transitional provisions should be considered when determining whether the applicability criteria of the more stringent fines apply.

Keeping in mind the lessons learned from the tax authority's position statement and the complexity of the regulations, please be advised that it might be helpful to check the legitimacy of any substantial default fines levied on the grounds of non-compliance with the reporting obligation.

Tax exempt sickness insurance rates

According to an announcement by the tax authority, as a consequence of a provision in Act CXVII of 1995 on Personal Income Tax (hereinafter: "PIT Act") effective as from 1 January 2012 according to which *the rate of sickness insurance that is funded by a payer (a company) for the benefit on an individual and has no repurchase value is tax exempt,* insurance products have emerged on the market which aim to use the option of tax exempt sickness insurance to fund certain high-value health screening texts (so-called manager health screening). The essence of such insurance cover is that the insurance company assumes minimal risk but allows comprehensive screening tests, while the payer (a company) pays the price of the screening tests as an insurance premium, treating such benefits as tax exempt benefits, although the PIT Act provides that such an insurance cover would be regarded as a taxable benefit.

On the one hand, the tax authority's conclusion is based on the fact that illnesses revealed before the risk is assumed may not be covered by the insurance. On the other hand, the tax authority underlines that if the sickness insurance contract contains no or only a marginal stochastic (random)

element or it covers only a few insured events and the insurance premium (excluding the administrative expenses and profits of the parties involved) covers only the price of the high-value screening tests, then the tax exempt treatment of employee benefits provided in connection with such sickness insurance contracts is questionable.

The tax authority's opinion is that, although health screening is an integral part of sickness insurance, the fact whether screening tests are justified can only be judged in light of what insured events are covered by a particular sickness insurance and for what amount.

Therefore, we urge employers to review their insurance contracts and the benefits provided on the basis of such contracts since insurance contracts which include only minor risk elements are not subject to preferential tax treatment. And if the insurance premium is not treated as tax exempt, then the tax liability on the premium will have to be determined based on the legal relationship between the payer and the individual and the conditions on which the benefits were provided, which means that in the case of employment the premium may be regarded as employment income.

Tax debt = Debt to the tax authority?

Following a recent favourable decision by the Supreme Court, taxpayers who deducted the amount of their local business tax from their corporate income tax base during the 2006 tax year and the tax authority has established that the Company owes delinquent taxes or has established other negative legal consequences by claiming that the Company had a gross tax debt, may consider seeking legal remedy. This ground-breaking decision may open a window of opportunity for taxpayers who, knowing the tax authority's approach to tax audits, did not exercise this deduction option back in 2006.

Taxpayers may attempt to enforce their claims for a refund through special legal remedies and should claim not only the amounts effectively paid but also the time value of money, i.e. including late payment interest, as the funds in question were not available to the Company during this time. However, before lodging such claims, taxpayers should make sure that they in fact didn't owe any tax debt at the end of 2006, paying special attention to the fact that the company may have owed tax debt to organisations other than the state tax authority as well.

Disaster management contribution

According to a recently proposed bill, all statutory provisions concerning the disaster management contribution would be abolished due to the difficulties in the interpretation of its text and the disproportionate amount of the administrative burden in certain cases. Should the bill be passed, entities subject to the disaster management contribution liability would not be required to declare the amount of the contribution in 2012 and pay advances and the contribution itself even though the provisions of the disaster management act pertaining to the disaster management contribution entered into force as from 1 January 2012.

Submission and disclosure of financial statements

As it is still a current issue, we would like to point out again that companies adopting double-entry book-keeping were required to submit their statutory financial statements electronically to the company information service through the e-Government portal by 31 May.

Meeting the deadline is critical as if the tax authority establishes that, based on the information provided by the company information service, the statutory deadline for the submission and disclosure of the financial statements has passed, the tax authority will levy a default fine of up to HUF 500 thousand and will request the taxpayer to comply with its obligations within an additional 30 days. If this deadline has also passed, the tax authority will levy a default fine of up to HUF 1 million on the day following the deadline and will again request the taxpayer to remedy the default before a new deadline set by the tax authority. Failure to meet this extended deadline will result in the tax authority notifying the Registry Court on the deletion of the taxpayer's tax number without suspension and will simultaneously initiate proceedings to declare the company defunct. Careful consideration of the above may help avoid any inconvenience later on.

New service line: Customs and global trade

Deloitte has always been committed to providing its clients with services spanning a wide range of technical areas. To this end, Deloitte is further expanding its already broad scope of services to include customs and global trade services, an area in which our professionals have many years of experience in tax authority work, consulting and representation in legal proceedings. In addition to consulting, our customs and global trade services include assessing and managing operational risks and providing support to and representing clients in tax management and administrative lawsuits.

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