

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.

Value added tax

Settlement based VAT deduction

The new VAT rules to be introduced from 1 January 2013 offers micro- and small enterprises the option to choose settlement based VAT deduction. Doing so, taxpayers' right of input VAT deduction would relate to actual payments, i.e. the right could first be exercised upon receipt of the consideration and this would be the date when taxes payable should also be assessed.

The new rule might raise issues for companies acquiring products or services from taxpayers opting for settlement based VAT deduction since their right of input VAT deduction would first arise, instead of the date of delivery, only on the date of payment.

Taxpayers not having the above option shall assess taxes arising in connection with their sales according to the general rules while they may first exercise their right of input VAT deduction concerning purchases from suppliers opting for settlement based VAT deduction on or after the date of payment of the invoice.

With respect to the new rules, please remember to proceed with particular care when processing invoices received from taxpayers opting for settlement based VAT deduction.

Tax administration

Unlimited liability for shadow directors?

In a communication published on its website, the *National Tax and Customs Office (NAV)* reminded taxpayers of a judgment of the *Appeals Court of Budapest* - passed in line with a decision of the *Curia of Hungary* - which sets forth that the de facto and shadow directors of the company under liquidation in the case concerned will have unlimited

liability for outstanding corporate debt owed to creditors.

In the case investigated, the directors, instead of paying the company's tax liabilities and debt owed to other duly operating companies, "planned to save", i.e. withdraw from the company a considerable amount under a doubtful loan agreement.

In the case, the Court took the position that de facto and shadow directors who are actually controlling companies from the background should no longer escape from being held liable. According to judgments passed in test cases filed by the *National Tax and Customs Office*, de facto directors will from now on defend themselves in vain arguing that they only lent their names to or did not actually perform any activities in the company, or were unaware of its operation. Shadow directors may neither be exempted from the serious legal consequences just because their names are not listed in company registry entries if it is proved that they were controlling the company, i.e. they directed it from the background.

With respect to this court judgment, the test results, as well as the criminal statistics of the *National Tax and Customs Office*, the tax authority, as it announced, will regularly take action to establish de facto and shadow directors' liability for damages. Concerning the communication please note that based on the provisions of the Civil Code, in addition to the tax authority, companies will also have the right to file such charges as claimants.

Transfer pricing outlook

Further discussing the activities of the tax authority, below we outlined our experience gathered during the audit of arm's length price calculations and in APA procedures throughout the 2011/12 period.

As we have seen, the tax authority has been focusing increasingly on the issue of updating benchmark studies and transfer pricing reports. In many cases, it proved insufficient to present a transfer pricing report; the outdating of information underlying the conclusions has become a key question of debate. The availability of functional analyses with sufficient detail, as well as the selection of the respective method and the comparable party have also been intensively investigated. When the tax authority looked into the accuracy of the arm's length range, in many cases it was debated whether only the interquartile range (IQR) is acceptable or other statistical eliminations are also suitable.

Overall, based on publications concerning the audit/APA and transfer pricing experience, it can be concluded that the tax authority has started to develop and in the future wishes to adopt in a wider circle a uniform practice which is not necessarily in line with the taxpayers' approach. You will soon hear more about the questions raised, related risks, as well as our risk management advice.

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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