

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.

Rules of tax exemptions of sport and cultural services

As we already informed our Clients, as of 2013 tickets or seasonal tickets for cultural events and library registration fee up to HUF 50,000 could be provided tax exempt as well besides tickets for sport events.

In order to dissolve the interpretation difficulties in the practical application of the new exemption rules, the tax authority published a guidance in which it emphasizes that the possibility of the tax exempt allowance is only available in the relation of private individuals and disburers which could be provided even in vouchers. Such relation exists between the employers and the employees, furthermore, between the enterprise and the business partner private individuals provided that the employer or the enterprise falls under the definition of disburser. This interpretation is neither influenced by the fact whether for example the theatre ticket provided to the business partner qualifies as business gift or not.

According to the regulations, the allowance up to HUF 50 thousand that is given in form of tickets or seasonal passes may be tax exempt if it is used for services provided by museums, for the admission to exhibition in art institutions, for the admission to theatre, dance, circus or musical art performance or for the admission to institutes provide educational activity; however, admission to the zoo is not included. On the contrary the classical and popular music performances, furthermore, performances containing both theatrical and musical elements (opera, operetta) are included as well as cabarets or stand-up comedies a like performance irrespective to the organizer or to the institute hosting the event.

Under cultural services provided by educational institute the self-motivated, self-cultivated, cognitive, culture-mastering, educational, creative activity outside of school shall be meant which is generally fulfilled with collaboration within the communities. Educational activity could not only performed in educational institutes, therefore, a dance club or any other creative club, study circle, lecture etc. are organized by a community center or held in rented place from village center could be considered as tax exempt cultural service; however, the services provided by cinemas that are organized on a competitive basis are not included.

Application of social contribution tax allowances by foreign disburser

We would like to inform our Clients that we have contacted the responsible authorities in order to resolve interpretation and administration problems with respect to the application of social contribution allowances by foreign employers (e.g. the credit related to the employment of people under the age of 25 starting out on a career).

As a result of our discussions, the tax authority came to the conclusion that that targeted tax incentives should be available in the case of employees employed by foreign employers provided that an appropriate insurance contract is in place (Section 56 of Act LXXX of 1997 on the Eligibility for Social Security Benefits and Private Pensions and the Funding for These Services). Nevertheless, given that the form '08INT is a simplified Hungarian-English return, the '08INT return has not been completed with blocks for reporting these incentives, the incentive could be claimed using the return of '08' prepared for Hungarian employers.

Change in the rules of address registration

We draw the attention of our Clients that as of March 1, 2013 many public administration procedures have been simplified, including the provisions of the act on personal data and address register related to the address notification of citizens. The possibility and obligation of reporting the – temporary – stay abroad over 3 months was cancelled. The reporting obligation of a citizen only arises if the citizen leaves the territory of Hungary with the aim of settling down abroad. However, it was not established if there is a deadline to report the leave of the intention to leave with the intent of settling down abroad. Therefore, citizens are free to decide the timing of the reporting in sole discretion.

The reporting could be done at any district council or consular officer either in person or electronically. (Who had previously reported their temporary stay abroad, action is only required if it was decided to declare the foreign settlement.) In the case of the reporting the settlement abroad, the identity card and residence card will be revoked. Afterwards, the citizen can be identified by his passport; furthermore, a new residence card is issued that indicates – without any specific address – that the private individual is "Hungarian citizen living abroad". Please note that in the event of a Hungarian citizen moving abroad the social insurance agency and tax authority must still be notified about his stay abroad.

Practical application of new invoicing rules

As we previously informed our Clients – as a result of the EU harmonization obligation of Hungary – major changes were made to the provisions of the invoicing requirements established in the VAT Act effective as of January 1, 2013. An important development is that the requirements of the paper-based and electronic invoices were merged of which in connection with, the tax authority has published guidance recently. The guidance highlights the correct interpretation of the new rules, defining the concept of retention obligations' imposed condition of "authenticity of origin", "data content integrity" and the "business audit process" that is supposed to secure the aforementioned.

According to the interpretation of the tax authority, the procedures fall under the business audit processes (on the side of the invoice recipient) are not intended to assess the conditions of the right of deduction set in the VAT act, the assessment of the conditions of the right to deduct VAT are beyond the control of the business audit process. According to the referred guidance the business audit process is intended to assess whether the invoices were issued correctly. An invoice with the correct content (correct transaction, correct parties to perform, appropriate consideration, the correct payment recipient) would namely support that the invoice complies with corresponding transaction.

Under the term "*business audit process*" a procedure is understood by the tax authority that is applied by the taxpayer in order to compare its own financial receivables and liabilities. The taxpayer as issuer and recipient of the invoices shall verify especially whether the stated transaction on the invoice was supplied in the indicated quality and quantity, furthermore, whether financial settlement is required, whether the provided bank account by the issuer of the invoice is correct and whether only those invoices were settled which were bound to be settled.

An important aspect of the business audit process that the invoice shall be verified within the business and accounting processes, rather than as an independent, stand-alone document. According to the tax authority's view on business audit process, the process complies with the provisions of the VAT Act if a reliable audit trace between the invoice and transaction indicated on the invoice is provided. This may be satisfied with a well-established accounting system, such as the application of integrated Enterprise Resource Planning system (in which the business audit process is based on integrated automatisms, so the originality and credibility of the invoice is ensured by the system itself) or with the manual comparison of the existing business documents (such as a purchase orders, assignments, contracts, delivery notes, transfer or payment certificates) with the invoices. The determination of the definition of business audit process's technique (including the determination whether during the business audit process certificates are created, furthermore, in what form and with what content are they created) is within the scope of taxpayers.

The tax authority's guidance emphasizes that electronic invoices sent and accepted by email in form of .pdf files the business audit process has

increased significance – with accordance to the invoicing principles – considering that from the form of electronic invoice types the data security level is the lowest.

Significant change in the legislation related to the controlling and processing of personal data

We would like to inform our Clients that the Hungarian Parliament has recently adopted the amendment to Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information (Data Protection Act), which rectifies the practical difficulties arising from outsourcing of certain business processes, namely the use of "data processor".

In business, the companies control numerous personal data to facilitate their business goals, or carry out data processing activity on a commercial basis, on behalf of other companies. The data processing activity includes the implementation of ancillary activities relating to data controlling, such as enveloping, posting, sending newsletters, database management, server hosting, agency activities, opinion polling, etc., whereby the firm gets in possession of personal data.

The persons of the data controller and data processor may be distinguished on the basis that the data controller is the one who determines the purpose of data controlling, and makes decisions regarding the processing of data. However, in practice, it is difficult to distinguish the persons of data controller and data processor in many cases. In particular, in relation to parent companies and subsidiaries or affiliated companies, when more parties are involved in the data controlling and data processing process.

According to the current provision of the Data Protection Act, the data processor may not engage additional data processor in the course of its activity. The purpose of the provision is to ensure that the personal data remain throughout under the control of the data controller and may only be transferred to a data processor, which is directly engaged by the data controller. In practice, it means that if an employer outsources its payroll to an external accountant, which stores the employees' personal data in cloud storage, the employer shall conclude a data processing agreement with the

cloud storage service provider, nevertheless, there is no business relationship between the ventures.

The relevant provision is fairly inflexible and imposes an obligation to data controllers, which can be hardly met in business, because it requires the data controller to directly contract with each data processor, who performs any activity on the personal data controlled by the data controller. It is obvious that it is almost impossible to meet this statutory requirement in the modern business, with particular attention to that the companies typically outsource some of their business processes to a professional service provider operating in the specific area, in order to cost-effective operation.

In accordance with the modification coming into force on July 1, 2013, the Data Protection Act will allow the data processor, upon the prior approval of the data controller, to engage additional data processor in the course of its activity. Namely, to engage an additional data processor with certain data processing subtask. It is important to emphasize that according to the new provision, for this, the prior approval of the data controller is required. Therefore, this issue shall be clarified before the conclusion of data processing agreement and include the related provision therein.

Should you have any data protection-related issues arisen in relation to the outsourcing of business processes, please do not hesitate to contact us.

"Grants of R&D&I umbrella projects" call for cash grant reopened

Up to HUF 2 billion (EUR 6.7 M) cash grant could be awarded for business related R&D&I activities in all regions of Hungary. The aim of the call is to support outstanding R&D&I projects which can develop new scientific or technological results, intellectual properties or create new R&D jobs. One of the major advantages of the call is that projects covering up to 36 months and embracing more subsequent or simultaneous subprojects could be eligible.

Companies employing at least 40 highly educated professional R&D&I employees and having at least three years of verifiable experience in R&D&I activity can apply for the grant. Major eligible activities are basic research, industrial research and

experimental development; eligible costs are wage related costs, contracted R&D services, purchasing of material, tangible and intangible assets.

Applications can be submitted from April 18, 2013 until the budget lasts, but May 27, 2013 at the latest, however applications filed earlier are most likely to benefit from the grant as it is anticipated that the budget will run out before the application deadline.

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