

## Tax News+



# Contents

New Curia judgment concerning the right to deduct VAT.....	3
Frequent assessments of customs control.....	3
Advertisement tax.....	4
Changes regarding the absentee fee, the records of salary and the provision of vacation.....	4
The calculation of the base salary and the absentee fee.....	4
Modification of the rules pertaining to flexible working arrangement.....	5
Alterations of the provisions on vacation.....	5

# 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.**

## **New Curia judgment concerning the right to deduct VAT**

In its recently published judgment of Kfv.I.35.005/2012/7, the Curia declared its position regarding the applicability of the judgment made relating to the unified cases of Mahagében Kft. C-80/11 and Dávid Péter C-142/11. In its justification, the Curia stated that the referred case of the ECJ is not applicable in the case when the issuer and the receptive of the invoice are related legal persons, as the European Court declared its position concerning the generally expected behavior and due diligence in the case of independent legal persons. Nevertheless, the Curia considers the economic and proprietary relationship between the companies (related parties) as such a fact, which cannot allow the company taking advantage of right to deduct the VAT to refer to the fact, that he was not aware of the circumstances of the transaction concluded with related party, he did not know of the content of the transaction or that he was misguided in this respect.

Furthermore, in its referred judgment the Curia pointed out that in the course of the judicial review of the administrative resolution, the legality of the resolution has to be judged based on facts and laws which were in effect at the time of making the decision. No retrospective reference – e.g. the current economic background of the company – cannot be taken into account; a posterior situation cannot be reflected to the period reviewed.

It is recommended to consider the judgment of the Curia in the course of current review procedures of the cases concerning the denial of the right to deduct the VAT.

## **Frequent assessments of customs control**

We call our Clients' attention to the recently published Tax Authority ("TA") guideline, where typical infringements are presented based on the experience of the assessments made in the course of post-clearance inspections.

It is particular to the post-clearance inspection performed after the customs treatment and the delivery of the goods is that entitled authorities may inspect the commercial papers, certificates and other documents, electronic databases regarding the import, export or transit of goods falling under the post-clear inspection procedure in order to make sure of placing the goods under customs control, as well as the correctness of the customs declaration. In addition, it is possible to inspect the transactions of the mentioned goods.

Infringements have been revealed in the course of post-clearance inspections typically in the following cases:

- The fees of transporting (carrying, treating and moving), forwarding and insuring goods – that increase the customs value and the VAT base – both inside and outside the European Union have been divided incorrectly and determined in the course of initiating the customs clearance procedure in respect of the customs value and the VAT base of extra-community goods.

This malpractice is due to the fact that the taxpayers – according to their real business interest – do not initiate the correction of the previously calculated customs value in accordance with correcting invoices regarding the number of items, unit price, and exchange difference issued/received after releasing for

free circulation. In addition to the above, it is another frequent mistake whilst calculating the customs value, transaction value that the goods are released for free circulation based on a preliminary invoice attached to the transport. These invoices are preliminary issued invoices, not related to actual financial transactions. In addition to that wrong practice, the supply invoices are issued with incorrect value.

- The fee of air transport is not reported / divided in line with Appendix 25 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 on the implementation of the Community Customs Code.
- Incorrect reporting of the transaction value and the difference of the real transaction value and the reported customs value (fee of planning and engineering works, agent's commission, equipment costs, cliché costs, administrative and wrapping costs have been not included to the customs value of extra-community goods).
- Considering the customs value increasing items, the lack of reporting the royalties is outstanding.
- Incorrect classification of goods. In this respect, most of the assessments are related to the classification of tariff heading of components, accessories.
- Incorrect application of MEURSUNG code.
- Application of incorrect statistical value in case of export customs clearance procedure.

As it was highlighted in our previous newsletter, the wide spectrum of the above detailed assessments reflects well the increasing activity of the NAV, which – according to the guideline – is related not only to taxation, but to customs matters as well. Considering this direction of inspections it is recommended to require the help of professionals in order to dissolve the possible insecurities in this respect.

## Advertisement tax

Considering the wide public attention in this respect, the draft copy of the bill on *“the measures to make in order to close the excessive budgetary deficit procedure”* has been published on the portal of the Government. The Government will decide on the final wording of the bill during the next cabinet. The

bill will be submitted to the Parliament afterwards. Therefore, the currently published and below detailed summary version only contains the relevant items of the bill, based on the non-final wording.

As per the draft bill, advertising would be a taxable activity. The tax would be payable by the advertiser, who can be a person or organization of foreign tax residence as well, obligated to pay tax on its advertising activity executed through a Hungarian branch.

According to the projections, the tax base would be the net revenue of the taxpayer realized in connection with its advertising activity. The tax rate would be 1 per cent for the tax base between HUF 1 billion and HUF 5 billion, 10 per cent for the tax base between HUF 5 billion and HUF 10 billion, and 20 per cent the tax base exceeding HUF 10 billion.

With respect to the bill, taxpayers would be obliged to pay the tax already this year, as tax advance payments for 2013. The amount of the advance payments should be calculated and reported for the first time until July 20, 2013, and it should be paid in two equal installments until August 20 and November 20, 2013.

## Changes regarding the absentee fee, the records of salary and the provision of vacation

On May 27, 2013, the Hungarian Parliament closed the detailed debate of the bill on the modification of certain acts in connection with the absentee fee and other ancillary matters (Bill No. T/11208). The bill amends the provisions of Act I of 2012 on Labor Code (Labor Code) related to salaries, the absentee fee and vacations.

### The calculation of the base salary and the absentee fee

According to the current legislation, the calculation of absentee fee is based on the amount of the hourly absentee fee which is the result of dividing the monthly base salary by 174. The absentee fee due for a certain period shall be calculated by multiplying the one-hour amount by the duration of the absence (e.g. by 8, in the case of a one day-long absence). The employee is entitled to the so

calculated absentee fee and to the similarly counted salary in the respective month. Since the divider of 174 represents an average number which does not take into account the actual number of working hours that can be scheduled in the given month, the employee becomes entitled to a remuneration varying in its amount dependent on which month the absence is taken and how long it lasts. In order to avoid the situation where the employee remunerated on a monthly basis would receive different amounts as salary each month, which amount occasionally may even not reach the level of the base salary established in the employment agreement, the bill excludes the application of the divider of 174. In the future, the calculation of the part of the monthly base salary and the absentee fee, due for a certain period of time, would go as follows: the one-hour base salary established according to the normal working schedule should be multiplied by the working hours to be performed in the respective period according to the normal working schedule. Different rules relate to the calculation of allowances and employees working in an uneven working schedule.

### **Modification of the rules pertaining to flexible working arrangement**

In line with the relevant jurisprudence of the ECJ, as of January 1, 2014, the bill sets as the condition of a flexible working arrangement that the right of scheduling working hours is fully transferred by the employer to the employee. The flexibility of the working arrangement would not be affected if the employee, due to their specific nature, may only perform some of the tasks at a certain point or period of time.

### **Alterations of the provisions on vacation**

Another important practical change is that while currently both the vested vacation days and the age-proportionate extra vacation days may be re-allocated until the end of the following year, according to the bill, only the provision of the latter may be delayed as from January 1, 2014 upon the agreement of the parties concluded for a calendar year.

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