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Tax News+

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Contents

Tax News+
Mid-year tax law changes

22 June 2013's amendments of certain legislation

On 22 June 2013, the act amending the rules of calculating the absentee fee and the regulation with respect to public funds was published. The act amends a series of tax legislations. The most important changes are described below.

The rules of calculating the absentee fee have been amended

The Hungarian Parliament has passed the act amending the rules of calculating the absentee fee (hereinafter: "Amendment") in its session held on 14 June 2013. The Amendment was published on 22 June 2013.

As we informed our Clients in one of our previous newsletters, perhaps the most significant modification introduced by the Amendment from the practical aspect is the amendment of the provisions of Act I of 2012 on the Labor Code pertaining to the absentee fee of employees. As of 1 August 2013, in order to calculate the hourly base salary of an employee – which is necessary to establish the time-based part of the absentee fee –, the monthly base salary shall not be divided by 174, but by the sum of the working hours incurring according to the normal working schedule in the respective month. Through the amendment, it can be avoided that an employee remunerated by a monthly-base salary receives different amounts as actual salary each month, which amount occasionally may not even reach the level of the base salary established in the employment contract.

According to the Amendment, as of 1 January 2014, for the application of flexible working time the employer shall fully transfer the right of scheduling working hours to the employee.

Also from next year, the regime of allocating holidays beyond the concerned year will change so that in the future, upon the agreement of the parties, only the age-proportionate extra vacation days may be re-allocated until the end of the following year.

Our employment experts gladly answer our Clients' queries related to the calculation of absentee fee or any other legal instrument affected by the Amendment.

Changes in the accounting of the year-end transfer pricing adjustments

In addition to our latest Breaking Tax News in reference to the amendments of the rules on the documentation of prices applied between related parties, we would like to emphasize that the legislative package published on 22 June 2013 contains further changes regarding the transfer pricing rules as well.

As of 30 June 2013, related parties will be able to opt for indicating the subsequent correction of the consideration for services or goods sold or acquired during a specified period in their books as part of the original consideration incurred in the course of the normal business activity. Such indication may be based on the contract between concerned parties and it may allow companies to avoid amending the corporate income tax base.

The correction of the consideration should be accounted for

1. in the case of the acquisition of assets as change in the historical cost of the asset,
2. in the case the of services acquired as modification to the incurred costs or expenses,
3. in the case of sale transactions as change in the net revenue, based on the accounting document issued regarding the subsequent modification.

In addition to the above, we note that the Amendment resolves the accounting issues with regard to the above transactions only partially, and, it still does not answer the questions about the VAT treatment of those.

Deductibility of E-toll from the local business tax

As part of the tax package published on 22 June 2013, as of 1 July 2013 the scope of deductible expenses for local business tax purposes is extended.

In line with the Amendment, 7.5 per cent of the toll paid and accounted for as expense or cost by shipping companies in the financial year in relation to the usage (based on the actual distance travelled) of highways, motorways and main roads will be considered as deductible from the local business tax payable to local governments of the seat or permanent establishment of a company.

If the company operates in the jurisdiction of multiple local governments, the amount of the 7.5 per cent of the E-toll shall be divided amongst the different jurisdictions in proportion to the total tax base and the tax base paid per local government.

Social tax incentive for employers operating in "free entrepreneurial zones"

According to the passed Amendment, the social tax incentive has become more favorable for companies operating in free entrepreneurial zones. In line with the new regulation, as of 1 July 2013 companies are no longer required to be entitled also for the development tax incentive established under the provisions of Act LXXXI of 1996 on Corporate Income Tax and Dividend Tax, i.e. they are not required to make high-value investments in free entrepreneurial zones in order to be entitled for the social tax incentive.

This basically results in the extending the scope of the applicants. However, we note that the legislature establishes multiple conditions for the application of the incentive. One condition is – among others – that the number of employees should not be reduced during the beneficiary period. Furthermore, new employees should not be taken over from related parties and they should have residence in the concerned free entrepreneurial zone for at least six months. To avoid accumulation of incentives, the application of the social tax incentive is not allowed in connection with an employee that receives financial aid from the National Employment Fund.

New Land Act

The Parliament adopted the act on transactions relating to lands used for agricultural or forestry purposes, i.e. the new Land Act on 21 June 2013. The act contains several new provisions on the acquisition and use of agricultural lands, among which we would like the draw the attention of our Clients to the following:

- Complying with the obligation of Hungary arising from its membership in the European Union, the act enables citizens of the European Economic Area to acquire agricultural lands, under the same limitations as applied to Hungarian private individuals.

- The new Land Act intends to favor specifically "agricultural workers" in the acquisition and use of agricultural lands, i.e. private individuals either having an educational degree in agriculture or forestry or those pursuing such activities. Accordingly, Hungarian private individuals and citizens of the European Economic Area not qualifying as agricultural workers may acquire, with certain exceptions, agricultural land up to a limit of 1 hectare. Further, as a general rule, only agricultural workers or agricultural co-operatives may gain right to use agricultural lands. Prohibition for legal entities on acquisition of agricultural lands will endure also after the new act enters into force.

- The transfer of ownership of agricultural lands will require the approval of the authorities in the future. The act prescribes subjective aspects in respect of the authorization process, which may give rise to uncertainties in the process. For instance, the approval may be denied in the case if the acquirer supposedly aims at seizing the ownership of the land without reasonable economic necessity, solely for accumulation purposes. We are of the view that the above provision of the new Land Act confers extensive discretion right on the authority. Moreover, no appeal will be possible against the decision, which may be challenged only before the court.

- It will be a condition for agricultural land acquisition for the acquirer to undertake that he will not let the use of the land to others, that he will use the land himself, and that he will be complying with the obligation of land use. There

will be exceptions to this general rule, e.g. the acquirer may allow use of the land by an agricultural co-operative in which himself or his close relative disposes of an ownership of at least 25 per cent.

The new Land Act is expected to enter into force in more stages. Some of its provisions shall be applied as of 15 December this year, and the act will replace the current Land Act in its entirety on 1 May 2014.

New tax amnesty

We inform our Clients that the Parliament adopted a new bill on 24 June 2013 with the aim of reducing the currently outstanding State debt. The bill provides for the introduction of the Stability Saving Account (hereinafter: "Stability account"), inter alia.

As of the announcement of the law modification, private individuals willing to pay at least 5 million Hungarian Forints will be entitled to a stability saving securities account and a stability saving bank account as a part of a bank account kept at a credit institution performing investment activity. Any kind of income (even non-taxed) can be placed on these accounts keeping anonymity as well.

Payments can be performed to an account only once: at the time of opening the account. However, the number of accounts opened by a private individual and the amount of the payment made is not limited. Interest cannot be paid on the outstanding balance of the account, and the owner of the account can engage the account keeper to perform only transactions concerning State securities issued in Hungary or another EEA country which are denominated in Hungarian Forint.

The main benefits of the Stability account are the following. Based on the established and impregnable legal presumption, during a future tax authority audit the amount paid on the account should be considered as an income received at the time of performing the payment. Furthermore, the credit institution provides the tax authority with information regarding the payments made to and from the account, as well as the amount of the tax deducted in relation to these payments without providing the name of the account holder.

The income accounted for on the Stability account (the income deriving from security yields and the gain of transactions performed with respect to these securities) should be taxable at the tax rate concerning the interest income and effective on the first day of the tax year (currently 16 per cent). Nevertheless if the time elapsed between the formation of tax payment liability and the payment on the Stability Account is:

a) less than 3 years, the tax base is 200% of the paid amount;

b) at least 3 years but less than 4 years, the tax base is 100% of the paid amount;

c) at least 4 years but less than 5 years, the tax base is 50% of the paid amount;

d) at least 5 years, than no tax payment liability should arise. Therefore, the private individual can realize a non-taxable income after 5 years.

Changes with respect to the applicability of the "SZÉP" card

Based on changes in the relevant Government Regulation, as of 1 July 2013 the range of applicability of the "SZÉP" card will be extended. As a result of the changes, the scope of transferring funds between the sub-accounts of the "SZÉP" card will be extended.

From now on, all three sub-accounts may be used to pay for entrance fees at beaches and health spas. However, payments for swimming-pool tickets shall still be made exclusively from the leisure sub-account. If the costs of services charged by accommodation providers (e.g. massage, half board and cosmetic treatments) are paid at the same time with the accommodation, they could be settled from the accommodation sub-account as well.

Registration fee for recreational activities (e.g. foot races) can be paid from the leisure sub-account of in addition to other sport activities (e.g. horse riding, sport fishing).

Convention on the Indo-Hungarian Social Security

In the present newsletter, we draw attention of our Clients to the most important provisions of the Agreement on Social Security between the Republic of Hungary and the Republic of India (hereinafter: "Convention") in force as of 1 April 2013, proclaimed by Act XXIX of as a result of negotiations between India and Hungary.

With respect to Hungary, the Convention should be applied in relation to insurance obligations, social security benefits, allotments related to unemployment and social security retirement benefits.

The Convention applies to everyone who previously or at the moment, belonged or belongs to the jurisdiction of any of the contracting States as well as to those that are considered as relatives of these people under the applicable laws of the contracting States. The Convention also applies to people that qualify as "stayed-behind" under the applicable laws of at least one of the contracting States.

The Convention stipulates, in general, that a person who works as an employee in one of the contracting States or conducts other profitable activity without the establishment of an employment relationship – with respect to this work or other activity – shall be exclusively subject to the jurisdiction of that contracting State. The Convention, however, states as exception from the general rule the provisions imposed in connection with expatriates.

Regarding expatriates, the Convention sets out that if a person is in an employment relationship with an employer that has a registered office in the territory of one contracting State, and the employer of the person sends him or her to the territory of the other contracting State to perform work for the benefit of the employer, the original contracting State's law should apply to the employment. A precondition of the aforementioned statement is that the anticipated duration of the assignment does not exceed five years.

According to the Convention – upon the joint request of the employee and the employer –, the competent authorities of the contracting States or their designated agencies are allowed to establish exceptions to the provisions regarding the determination of the jurisdiction with respect of certain people or group of people. A precondition to this statement is that the concerned person is subject to the laws of one of the contracting State. Such exceptions may be based on the nature and circumstances of the employment.

The effect of Croatia's adhesion to the EU

We inform our Clients that on 1 July 2013 Croatia joined to the European Union as the 28th member state. After the adhesion, the borders open up and Croatian citizens are free to move and take employment in most countries of the region. On the border of Croatia and Hungary, the customs check will be ceased but the passenger traffic will still be monitored since Croatia did not automatically become a member of the Schengen area by joining the EU.

Some countries in the transition period temporarily restrict the free employment of Croatian citizens (e.g. Germany for 2 years). According to the information furnished by the responsible under-secretary for EU Affairs in the Ministry of Foreign Affairs, Hungary opens its labor market and will apply Community law in respect of the free movement of people and the right for residence. In Hungary, mass immigration is not to be expected since only 229 Croatian citizens held a work permit in Hungary according to the employment data of the end of May.

As of 1 July 2013 for the employment of Croatian citizens in Hungary no working permit will be needed. The employer is only responsible for notifying the competent Labor Office. Croatian citizens staying continuously more than 90 days in Hungary are obliged to register at the Regional Immigration and Nationality Directorate.

Non-binding ruling with respect to the VAT treatment of cross border transactions

In the framework of the EU VAT forum, 13 countries – including Hungary – are involved in the new initiative, based on which non-binding rulings as regards the VAT treatment of cross-border transactions can be requested during the test period in 2013.

The aim of the new legal instrument is that taxpayers who are involved in cross-border transactions – concerning one or more participating Member States – can request non-binding rulings which cover the VAT treatment of the whole transactions in the Member State where they are registered as a taxable entity.

As regards non-binding rulings, we consider the following worth outlining:

- The non-binding ruling request should be submitted in a language which is accepted in the other concerned Member State (all participating Member States accept the English language).

- If more than one taxpayer is concerned with the non-binding ruling request, only one taxpayer should submit it in which case this taxpayer acts on the behalf of the other(s) as well.
- The Member States concerned shall consult each other only if it is especially requested by the taxpayer.
- Consultations between the Member States concerned do not necessarily result in that the resolution issued by them will contain the same professional position.
- Member States shall issue a resolution as soon as possible; time limits set out under the national rules do not apply.

The benefit of a non-binding ruling on the VAT treatment of cross-border transactions is that such rulings may provide confirmation of the VAT treatment of transactions which includes the interpretation of several participating countries as well. In addition, the advantage of this new legal instrument is that, in the case of explicit request, the participating Member States are forced to conciliate their standing point on the treatment of a transaction to at least a certain extent. Given that the request should be submitted both in Hungarian and English language and the fact that the legal system, interpretation and case law of a Member States may be different to those of Hungary, we would like to emphasize that it is advised asking a tax expert for help in connection with the preparation of the non-binding ruling request who has extensive knowledge in relation to the VAT treatment of international transactions.

Change in the deadline of initiating the online cash registers

According to the modification of the Decree of the Ministry for National Economy regulating the introduction of online cash registers effective as of 29 June 2013, the cash registers not complying with the new requirements but approved before 20 March 2013 shall be running until 31 August 2013, instead of the previously determined deadline (30 June 2013).

Those taxpayers who are obliged to operate cash register and who purchased a new cash register due to starting new activity or other reasons between 1 May 2013 and 30 June 2013 are allowed to fulfill their receipt and invoice issuing liability by issuing manually prepared receipts, invoices until 31 August 2013, instead of the previously determined deadline, i.e. 30 June 2013.

Health tax liability on the interest income

We have already drawn our Clients' attention to the health tax liability of 6 per cent payable on the interest income of private individuals. In our present newsletter, we highlight the differences of the draft law and the amended law announced on 30 June 2013.

It has been clarified that the personal income tax, as well as the health tax of 6 per cent related to the interest income are payable by the interest paying party. In addition, the amendment extends the health tax liability also to the gain on amounts placed on long-term investment accounts providing that the commitment – as per the long-term investment contract – should be interrupted prior to the last day of the three-year commitment period.

The amendment provides exemption for – inter alia – the interest paid on debt securities (Government securities) in accordance with the Hungarian Act on Personal Income Tax, denominated in Hungarian Forint and issued by an EEA country.

In addition, the clarification of the text stipulates that no health tax liability should arise in respect of exempt interests. The amendment also states that the private individual can reclaim the amount of health tax – deducted from foreign persons as per the Social Security Act or other persons ensured in member countries – in the course of tax reclaim procedure applicable for private individuals of foreign tax residence.

Payment compensating the lack of transaction tax

In the frame of our Breaking Tax News and during the legislative period, we have already informed our Clients about the increase of rate of financial transaction tax, as well as the telecom tax. Additionally, we would like to highlight that the law amendment announced on 30 June 2013 states that the money transmission service providers (except for the State Treasury) – in order to fulfill

their transaction tax payment liability with respect to the original expectations – are obliged for a one-time additional payment compensating the lack of transaction tax in 2013. The amount of the one-time additional payment is 208 per cent of the sum of transaction tax payments performed from January to April 2013. The money transmission service provider has to determine the amount of the compensating payment by 20 September 2013. The liability needs to be reported as part of the transactional tax form, and paid in four equal installments – until 20th day of the months from September to December 2013.

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