

Tax News+



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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.

Modifications in the Civil Code favor industrial creditors

Deloitte | Legal

With the current issue of our newsletter we would like to draw the attention of our Clients to the amended provisions of the Hungarian Civil Code regarding late payments among economic operators, which have changed in a way favoring the creditors.

The aim of the amendment of the Civil Code and the related sectorial laws is to repress delayed payment and circular debts which became particularly common in certain industries. The amendments are in accordance with the similar aspirations of the European Union, and transpose first of all the provisions of Directive 2011/7/EU of the European Parliament and of the Council accepted on 16 February 2011 on combating late payment in commercial transactions to the Hungarian national law. According to the Directive, late payment constitutes a breach of contract which has been made recently attractive to debtors in most Member States by low or no interest rates charged on late payments and slow procedures for redress. The Member States wish to combat this issue with joint effort.

Payment deadlines

According to the new provisions of the Civil Code, if the parties did not fix the time of payment of a monetary claim in the contract, it shall be satisfied within thirty days after the receipt of the creditor's request for payment or invoice. If the creditor's contractual performance happens after the receipt of his request for payment or invoice by the debtor, or if the date of receipt of the creditor's invoice or request for payment cannot be clearly determined, or in case the debtor is required to make payment

before the time of receipt of the creditor's invoice or request for payment, the monetary claim shall be satisfied within thirty days after the creditor's contractual performance.

Interest for late payment

In case of contracts among economic operators, the rate of the interest for late payment changed to the sum of the reference base rate elevated with eight percentage points instead of the earlier seven percent. The definition of the governing reference base rate has also been modified. The governing base rate is no longer the sum of the central bank base rate in effect on the last day preceding the calendar half year to which it pertains, but that in effect on the first day of the calendar half-year affected by the default. A contractual term which excludes interest for late payment shall be considered null and void, except if the debtor undertook to pay liquidated damages in case of late payment.

Lump sum compensation for recovery of claims

The amendment of the Civil Code introduced an instrument previously unheard of in Hungarian law, the so called lump sum compensation for recovery of claims, which is intended to cover the costs the creditor spent on recovering claims from the debtor. The fixed amount to be paid to the creditor as compensation is an equivalent of forty euros payable in forints, and due on the first day of the delay of payment. It is important to note that the fixed sum of the compensation neither depends on the duration of the delay, nor on the severity of the detriment caused with the delay; and reimbursement of the fixed sum shall not bring immunity from other legal and contractual consequences of late payment, therefore it is not possible to set it off against the amount paid as interest for late payment. The minimum

compensation has to be paid by the debtor even if the delay can be justified, or no actual costs have emerged on the creditor's part upon recovering the claims. However, the indemnification payable by the debtor for the breach of contract shall include the fixed sum compensation as well. A contractual term that excludes the fixed sum compensation shall be considered null and void.

The provisions introducing the fixed sum compensation raise numerous accounting, tax and legal issues. For example, it is not clear, if it creates a tax liability when someone doesn't wish to enforce the compensation against a business partner, disregarding the statutory provisions of the law for some reason. The effective starting date of the law change is also in question. According to the detailed explanation of the Civil Code, the amended provisions apply for contracts executed after 16 March 2013, however the amendment itself entered into effect only on 1 July 2013, and no provision regarding the retroactive applicability of the new rules is introduced. To avoid any possible risks, we suggest our Clients to review the legal, accounting and tax policies of claim recovery, in which our experts stand at your disposal.

Accounting treatment of transfer pricing adjustment

Based on the mid-year modification of the Act on Accounting and as of 30 June 2013, related party entities are entitled to represent the price adjustment applied to products and services purchased or sold in the frame of normal business operation, during a given period, according to the agreements concluded between themselves as the modification of the originally applied price. Considering this possibility, no corporate income tax base modification is to be performed upon modifying the applied price. The price adjustments are to be accounted for as part of the cost of the asset upon purchasing assets; as modification of expenses, expenditures upon purchasing services; as part of the net sales revenue upon performing sales activities based on the subsequently issued accounting certificate.

During the three months that have elapsed since its entry into force, no obvious practice has been implemented regarding the integration of the new rule into the complex treatment of the transfer pricing adjustments (i.e. accounting and all tax types). Namely, the modification raises – among

others – the question how the price adjustments performed prior to the entry into force of the law amendment should be treated from an accounting point of view. As the practice pointed out in many cases during the prior period that companies accounted for the financially already realized transfer pricing differences in line with the newly established rules, risks may have arisen in this respect, as this kind of accounting treatment did not comply with the prior wording of the Accounting Act. Considering the incertitude of the intention of the legislators regarding the time-limit to apply the new rules, Companies should pay special attention to the price adjustments accounted for prior to the entry into force of the new rules and also to the proper availability of contractual terms, as well as to the correct treatment of certain tax related issues (e.g. corporate income tax, value added tax, local business tax, customs).

Excise rules tackling the counterfeit of engine oil

According to a number of professional sources, the counterfeit of engine oils of especially known brands became more and more widespread in Hungary. The National Tax and Customs Authority (NAV) and other professional organizations intend to hamper this tendency.

The Mineral Oils Association and GÉMOSZ agree with the standpoint that the spread of engine oil counterfeit can be prevented by amending the rules concerning this product group, furthermore by providing authorities with permission to control them.

According to the professional organizations, lubricants should be subject to the act on excise tax, considering that being subject to the environmental protection product fee cannot ensure effective authority control of this product group. Should this proposal of professional organizations be considered by legislators and law enforcement authorities, the implementation of the proposal may result in amending the act on environmental protection product fee and the act on excise tax simultaneously.

As per the current practice, this product group – being subject to the environmental protection product fee – is controlled by the customs authority only in case the products are transported in bulk and the transportation is properly reported to the customs authority. Should this product group be

added – in accordance with the intention of professional organizations – to the controlled group of mineral oils and should their production and trade be performed in accordance with the general authorization and control rules, the law amendment would incur significant financial and administrative burden to the affected entities.

Based on the act on excise tax, the wholesale trade, import, export and intra-community trade of mineral oil products is subject to the possession of excise permission. Regarding the conditions of being entitled to the excise permission it is to be noted – among others – that an excise guarantee amounting to HUF 120 million needs to be granted.

The clarification of this issue from an excise point of view appears to be rather complicated due to Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity. The directive clarifies that it (i.e. the directive) cannot be applied to “energy products not used as motor fuel or heating fuel”; therefore it does not contain the customs code of motor oils either. The Directive sets out, that all products – saved for any product

subject to tax – offered, sold or used as fuel, additive or diluent to fuel are subject to taxation, however the use of engine oils do not comply with the above criteria.

Nevertheless, should the opinion of professional organizations be taken into consideration by the legislators, engine oils – even if without tax rate and through granting special guarantees – might be subject to the control of NAV upon identifying the controlled mineral oils from an excise tax point of view. This approach might be the solution to the acute problem of product counterfeiting; however it is contrary to the investor-friendly economic environment.

In case this product group becomes subject to excise tax – but non-taxable as energy product –, the central budget would lose significant income deriving from environmental protection product fee, which might be challenging from a governmental point of view.

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