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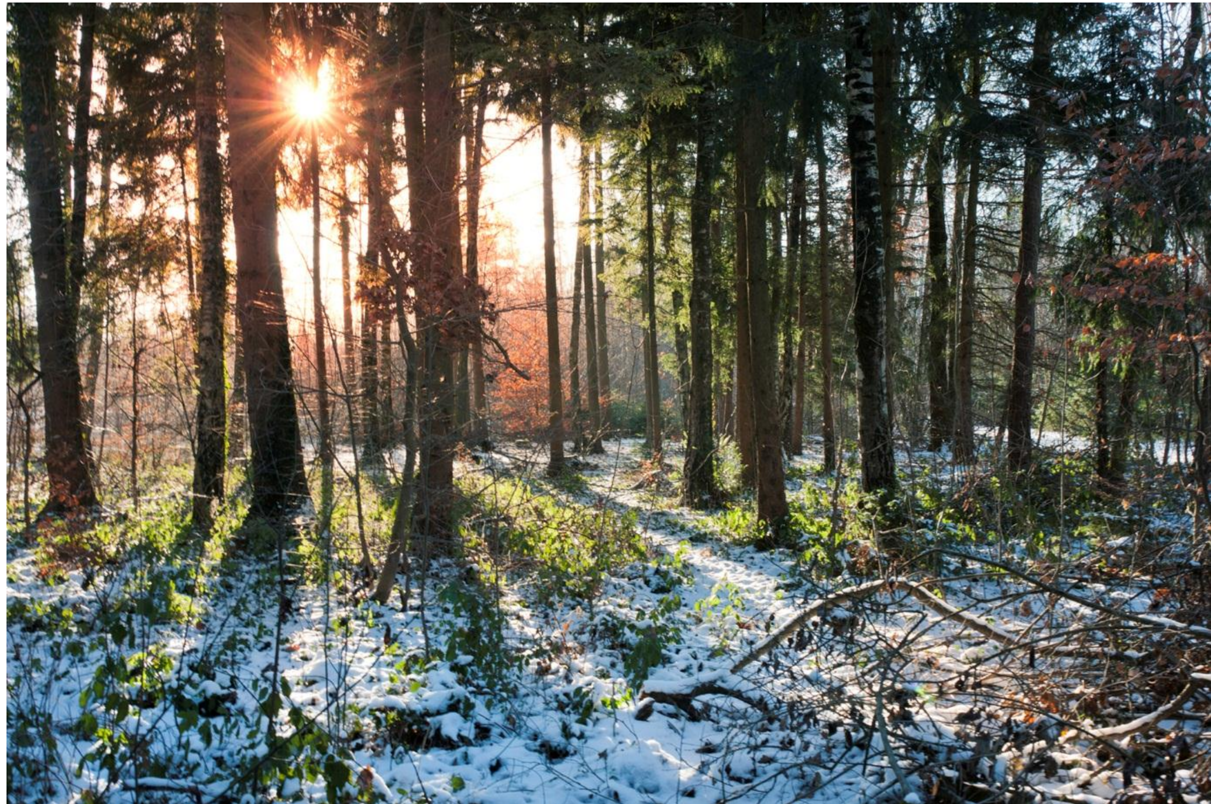

6 December 2013

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.

The method of calculating the stays in the Schengen area has been amended

Regulation (EU) No 610/2013 of the European Parliament and the Council came into force on October 18, 2013. Based on the regulation, the method of computing short-term stays in the Schengen area has been amended. Third country nationals in possession of valid travel documents authorizing them to cross the border of the Schengen area may legally stay in the territory of the Member States for 90 days in any 180-day period (provided that they are not required to obtain a visa and they are not in possession of a residence permit). For the purposes of such a stay, every day of the 180-day period prior to the entry into the Schengen area must be taken into account.

Previously, the 3-month period of maximum legal stay in the Schengen area was calculated by taking into account the 6-month period following the first entry into the area. After the expiry of the six months, the 3-month rule could restart. This could result in numerous misinterpretations at border crossing points, especially in case of third-country nationals travelling into the area on a regular basis. Therefore, the modification of the Regulation became necessary.

According to Regulation (EU) No 610/2013, the entry and the planned stay cannot exceed 90 days in any 180-day period prior to the entry. This rule is only applicable to EEA countries and Switzerland but it does not concern Bulgaria, Croatia, Ireland, Romania, Cyprus and Great-Britain considering the fact that these countries are not yet participatory in the Schengen Agreement.

Restraining double non-taxation by amending the Parent-Subsidiary Directive

The European Commission published its proposal for the amendment of the Parent-Subsidiary Directive on November 25, 2013. The proposed amendment aims at restraining group-level corporate income tax avoidance within the European Union.

The main purpose of the Parent-Subsidiary Directive, that was originally framed in order to avoid double taxation, was that companies being members of the same company group but operating in different Member States be not required to pay tax two times in relation to the same income if certain conditions are met. Considering the fact that the utilization of certain options of the Parent-Subsidiary Directive and domestic rules of Member States could result in double non-taxation, the European Commission proposed for the amendment of the Directive.

As per the proposal of the European Commission, on the one hand, Member States should restrain tax avoidance by adopting common rules through which agreements aiming solely at tax benefits could be identified.

In addition, the European Commission proposed for the introduction of a regulation that would exclude the utilization of directive benefits in case of certain tax planning solutions. As an example, the proposal mentions the agreements related to hybrid instruments that may give rise to double non-taxation. In case of such agreements, for example, an investment is considered as capital on the level of the parent company and dividend is deemed to have been received from the subsidiary. This dividend is exempted at the parent company. On the other hand, based on domestic rules of the country in which the subsidiary is resident, such payment may be considered as interest and thus tax deductible expenditure at the subsidiary. Regarding such structures, the proposal would prevent tax avoidance by treating payments received from the subsidiary as taxable at the level of the parent company in case the subsidiary has considered the payment originating from such loan as tax deductible expense.

Based on the proposal of the Commission, Member States would be required to implement the new EU rules into their domestic law by December 31, 2014.

Bill on trusts and the regulation of their activity

Act V of 2013 on the Civil Code (hereinafter: "Civil Code") introduces the concept of trusts into Hungarian law to take effect on March 15, 2014. Although the Civil Code sets forth the basic rules on the activities of trusts, it delegates the development of the detailed specification of trusts to other legal acts.

The Bill submitted on November 29, 2013 contains detailed rules in relation to the authorization and the registry of the activities of trustees acting on a business basis and the procedural rules related to the cession of such trustees without a legal successor; rules related to the reporting of the trustee's activities in case of trustees acting on a non-business basis; and also rules in respect of registering relevant data of reported contractual relationships of trustees.

The Bill amends several acts in connection with the concept of trust in order to ensure the possibility of tracking modifications incurred in the composition of the property inserted into the trust and the yield generated during the existence of the trusts. The Bill also aims to ensure that the application of trusts does not result in additional tax liabilities compared to the situation where the principal of the trust transfers the property directly to the beneficiary. The prevention of the tax evasion related to the utilization of trusts is also listed among the aims of the Bill.

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