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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.

New possibilities in connection with the accounting of year-end transfer pricing adjustments

As we previously informed our Clients, due to the modification of the Accounting Act in June 2013 followed by its amendment effective since 1 January 2014, related party entities may perform transfer pricing adjustments on a more effective way. The subsequently accounted difference of the arm's lengths price and the applied price related to sold/purchased products and services during a given period may be accounted for by the related parties as follows. The difference of prices can be accounted for as part of the historical value of the asset in case of asset purchase; as amendment to costs/expenditures accounted for in case of purchase of services; as part of net sales revenue in case of sales. This practice can be applied even without issuing correction invoices instead of performing corporate income tax base modifications. As of the tax year 2013, the new rules set out the application of such year-end adjustment corrections instead of the other methods used prior frequently (e.g. other/extraordinary income/expenditure) that often gave rise to significant risks.

In case related parties decide to use the above described accounting method, differences relating to the current year are to be accounted for in the general ledger of the current year's balance sheet preparation day at the latest.

It has also been confirmed by the authorities that the correction cannot be treated as a modification to the consideration of original and individual transactions if the correction solely aims the proper profitability in accordance with the contract concluded between the parties. This practically means that issuing a correction invoice mentioned in the VAT Act)is not required; the accounting is to be treated as falling out of scope of VAT and it can be underpinned by every kind of document being considered as acceptable proof as per the Accounting Act.

The above rules may significantly ease the operation of companies and clarify the year-end adjustment accounting practice; however an appropriate contractual background, availability of proper documents and well-established transfer pricing documentation is required.

As of 1 January 2014 the Treaty on the social security concluded between Hungary and Japan entered into force

According to the provisions set out in the Treaty, based on the certificate issued by the competent authorities of the contracting States, private individuals working in the other State in frame of secondment (or secondment with local employment contract) are exempt from paying contribution in the State of work as of 1 January 2014. The exemption period should be up to 5 years, which can be extended once by one additional year. In case of mutual request of the employer and the employee, the above exemption period of 6 years can be further extended by the individual decision of the competent authorities.

The Treaty should be applied to all private individuals having fallen or currently falling under the scope of Hungarian or Japanese law, as well as their relatives.

Consolidated authorization procedure

Based on the Government Decree 445/2013 (XI. 28.) in effect as of 1 January 2014, a consolidated authorization procedure is applicable regarding the employment and residence of third country nationals in Hungary. Such law amendment was due to the requirement of harmonization arising from the implantation of directive 2011/98/EU of the

European Parliament and of the council of 13 December 2011.

As per the Decree effective since 1 January 2014, a combined permission of employment and residence of third country nationals in Hungary will be issued based on the request previously submitted to the immigration authorities. (Previously effective rules set out separate permissions regarding the employment and residence of third country nationals in Hungary. The residence permission was issued by the immigration authority, whilst the employment permission was issued by the labor center of the departmental government office.)

The consolidation will likely extend the procedure duration, which might last even three months.

Relevant CJEU decision in connection with the tax exemption condition of export sales

The Court of Justice of the European Union has recently made a decision regarding the legal conditions of VAT exemption of export sales, previously raised by the Curia. In respect of VAT exemption of export sales, both the rules of the former and the current VAT Act set out as condition of exemption that products sold to third countries need to leave the territory of the Community within 90 days following the date of supply. In frame of supervisory appeal, the Hungarian Curia reviewed whether the above criterion should be in line with the Directive.

In the reviewed case, the taxpayer sold products to third country, however the products left the territory of the Community once the deadline – i.e. 90 days – set out in the VAT Act has passed in a number of cases. Nevertheless, the taxpayer treated such transactions as VAT exempted export sales, based on which the tax authority – upon its audit performed at the taxpayer – assessed tax shortage, tax penalty and late payment interest accordingly.

The Curia turned to the CJEU in order to decide whether a national regulation revoking the right to consider a transaction as tax exempt solely due to exceeding a deadline is in line with the Directive.

In its decision, the CJEU stated that certain restrictions can be indeed applied in order to ensure the proper application of tax exemptions and prevent tax evasion. However, such restrictions cannot violate the purposes of the laws. As for the given case, it has been stated that the restrictions regarding the exit of products after the reviewed deadline results in such loss of law, which does not ensure to the taxpayer reclaiming the amount paid due to missing the deadline, should the exit of product has had indeed taken place in due time.

Considering this the CJEU stated that a national regulation based on which taxpayers permanently lose the right to treat a transaction as tax exempt solely due to not meeting a deadline should be contrary to the Directive.

Tax refund possibility in respect of prior periods

Due to the decision, the aforementioned limitation deadline of 90 days has been modified as of 1 January 2014. As per the new rules, should the 90 days deadline elapse the taxpayer is required to charge the amount of VAT on its sales. However, the amount of VAT payable can be subsequently decreased, in case the exit of products is officially executed within 360 days as from the date of supply. The Act on the Rules of Taxation entitles taxpayers to reclaim the tax via a special application procedure, providing that the given transactions were originally not treated as tax exempt export, or in case the tax authority has challenged the application of tax exemption upon its subsequent audit. We draw the attention of our Clients that tax is reclaimable only regarding those periods that were not expired at the day of announcing the decision, i.e. 19 December 2013. Furthermore, it is to be kept in mind that the 180 day-period which is open to submit such an application should be also calculated from the day of announcing the decision.

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