

Breaking Tax News

Advertising Tax Act

In contrast to our monthly Tax News+, in our Breaking Tax News you will be informed immediately of regulatory changes affecting your business but without commentary by our experts.

On 11 June 2014 the Parliament adopted the bill on the Advertising Tax Act (“Act”).

Although media coverage seemed to imply otherwise, **the advertising tax will not only cover commercial television networks and newspapers**. This new tax will also be levied on revenues realized from retail brochures, advertisements related to certain vehicles, etc. and on the costs incurred in respect of own advertisements. Thus, the advertising tax will **primarily impact companies engaged in business advertising and/or companies spending considerable budget on developing websites, preparing and distributing brochures, posters or any other type of self-advertisement methods**.

Below, please find a summary of the essential provisions of the Act and our respective comments regarding the potential practical and tax technical issues which may arise as a result of the application of the new act.

Main provisions

The advertising tax will be applicable to media and content services providers, publishers of press and media products, companies utilizing outdoor advertising carriers or vehicles, printed material and real estate for advertising purposes and companies engaged in online advertising mainly in Hungarian. The tax base is the net revenue realized from such activities and the costs arising through the publishing of own advertisements. The tax base for the financial year beginning in 2014 may be decreased by 50% of the amount of losses carried forward as stipulated in the Corporate Income Tax Act or Personal Income Tax Act. Such tax base adjustment may not exceed the amount of the tax base.

The tax rate is progressive, according to the consolidated tax base of related entities:

For the portion of the tax base falling between:

Consolidated tax base	Tax rate
0 - 500 million HUF	0%
500 million HUF - 5 billion HUF	1%
5 billion HUF - 10 billion HUF	10%
10 billion HUF - 15 billion HUF	20%
15 billion HUF - 20 billion HUF	30%
Exceeding 20 billion HUF	40%

The payable tax should be assessed and reported by the last day of the fifth month following the tax year in question. Taxpayers will also be obliged to report and pay tax advances in two equal installments (in the seventh and the tenth month of the relevant tax year). In the final month of the relevant tax year, taxpayers will be obliged to top-up the forecasted annual tax payment liability. The difference between the amount of tax advances, the top-up payment and the actual annual tax liability should be paid by the last day of the fifth month following the tax year. Any overpayment may be claimed after this date. Should the tax base not reach 500 million HUF, the taxpayer will not be obliged to report the annual tax liability, the tax advances or the top-up payment.

For the 2014 financial year, transitional rules stipulate a proportionate tax payment liability which starts on the date the Act has come into force and ends on the last day of the financial year. The tax advances for 2014 should be paid by 20 August 2014 and 20 November 2014 respectively.

Comments

Precedents

This new tax is similar to retail tax and local business tax in that related party entities will be obliged to apply a progressive tax rate to their consolidated tax base and divide the tax liability proportionally based on their individual tax bases. On 5 February 2014, the ECJ provided an assessment of the retail tax. The ECJ set forth that the method applied to assess the tax base and the progressivity of the tax rate may breach the freedom of establishment. As a result, the Court of Justice of Szekesfehervar (the competent authority in the case) is obliged to decide whether the freedom of establishment has been breached by this assessment through applying a disadvantageous tax treatment to company groups with their top company registered in other EU member countries.

„Consolidated” tax base of related entities

This new tax raises questions similar to those mentioned above in respect of the tax base assessment on a consolidated basis. Specifically,

- How should taxpayers applying various financial years calculate their tax base?
- What are the implications if the tax authority, following an audit, finds that one of the related entities calculated its standalone tax base incorrectly?

Mixed tax base

According to the Act on Advertisement Tax, the tax base includes the net revenues arising from advertising activities and the costs of publishing own advertisements. The calculation of the tax base is based on the aggregate amount of the net revenues and the abovementioned costs. This method is fairly new.

Accounting as expenditure

Taxpayers falling within the scope of the Accounting Act may deduct the amount of the advertising tax calculated from their profit before tax.

Additional comments

Certain aspects of the new Act remain open to practical interpretation. For example, the determination of the tax base of multi-functional objects subject to tax has yet to be specified in practical application (i.e. websites, coupons or vending machines utilized as a sales channel and for advertising, etc.). In addition the interpretation of the term online advertising activities “*mainly in Hungarian language*” or the term “*any vehicle for advertising purposes*” etc. remain open to interpretation.

Should you have any remarks or questions regarding the above, please contact our professionals.

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