



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.

New double tax treaty between Hungary and Switzerland

According to the information published by the Swiss Federal Department of Finance the new treaty on the avoidance of double taxation between Hungary and Switzerland has recently been ratified. Therefore, the new treaty has entered into force. The new treaty may be applicable to income generated on or subsequent to 1 January 2015 and in respect of tax years commencing on or subsequent to 1 January 2015. The new treaty (contrary to the previous treaty) contains an exchange-of-information clause. According to the treaty the exchange of information may not be declined *“solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person”*. Based on the new treaty the authorities may request information for periods commencing on or subsequent to 1 January 2015.

The application of interquartile range in transfer pricing

One of the major amendments to the corporate income tax legislation published on 26 November 2014 is that the application of the interquartile range during the determination of the arm's length price range. According to the new legislation, in those cases in which the functional analysis, the number of comparable or the extreme values would necessitate, the statistically reduced profitability range in which half of the comparable would fall (interquartile range) should be applied by the tax

payer to determine the arm's length price range of the given transaction. The new legislation includes a specific reference to the decree of the Ministry of Finance (“Documentation Decree”) on documentation requirement. However, currently the Documentation Decree does not include detailed provisions on the application of the interquartile range. As a result of the above, significant uncertainties may arise with regard to the interpretation of the new legislation. No clear explanations are set forth with regard to the cases in which the interquartile range should be applied. As a consequence, the Documentation Decree may be subject to future amendment (as in previous years).

We would like to note that from a practical perspective the above detailed amendment of the legislation serves solely as a confirmation of (in the form of legislative provisions) current tax audit practice. In the past the Hungarian tax authority (during the course of tax audits and in case of advance pricing arrangement procedures) most frequently required the application of the interquartile range during the determination of the arm's length prices. The expected amendments to the Documentation Decree could clarify the current uncertainties arising with respect to the cases in which the full range should be further reduced by statistical means. Although the new rules should be applied as of 1 January 2015, the new legislation may imply further uncertainties with respect to open tax years. Specifically, when the previously applied transfer prices do not fall within the interquartile range and based on the new rules the reduced statistical ranges should be applied.

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