



**Central and Eastern Europe Tax Firm of the Year** International Tax Review European Tax Awards 2012, 2013, 2014



# 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.

## Amendments to the transfer pricing legislations

We would like to draw our Clients' attention to the recent amendments to the decree issued by the Ministry of Finance on the transfer pricing documentation requirements ("Documentation Decree"). The amendment was published on 30 December 2014. The new regulations should be applied first preparing the transfer pricing documentation regarding the tax year commencing in 2015.

According to the current wording (which entered into force on 1 January 2015) of Point (9) of Section 18 of the CIT Act, the interquartile range should be applied in order to determine the arm's length price range in certain (reasonable) cases. The most significant amendment is that the Documentation Decree sets forth those cases in which the interquartile range is applicable. According to the amended regulations, the interquartile range should be applied, if following conditions are met:

- The taxpayer should apply a profitability based method or another method for determining the arm's length price range.
   In this respect a profitability based method means the resale price method, the cost plus method, the transactional net margin method and the profit split method:
- The taxpayer should perform a database based benchmark analysis in order to identify comparable data;
- The benchmark analysis should take into account at least 10 companies' financial data for three years or the range of comparable data should exceed 15 percentage points.

Irrespective of the above conditions, the interquartile range is not applicable in the following cases:

- If a functional analysis is available in a properly documented format on each comparable, and
- If the taxpayer proves in an unquestionable manner that the intercompany transaction and the third party transactions are comparable to each other, and
- If all the required information is available for the comparison of the transactions.

However, based on Deloitte's experiences this kind of functional analysis is generally not available and the preparation thereof would necessitate significant efforts. As a consequence, this potential scenario may not be relevant from a practical perspective.

The tax authority (during the course of tax audits and APA procedures) generally expected the application of the interquartile range. As such, in practice the amendments to the Documentation Decree serve as a confirmation of the tax authority's current practice. In this respect (although the new rules are applicable as of 1 January 2015) risks may arise in terms of the open tax years, if the prices applied in the above indicated cases fall outside of the interquartile range.

As an additional amendment, the Documentation Decree sets forth that taxpayers may opt for the application of comparability adjustments (regardless of whether this is specified in the OECD Transfer Pricing Guidelines) in terms of benchmark analyses. The aim of the application of such adjustments is to improve the efficiency of the comparability. However, if a company opts for the application of such adjustments, then the background of the application and the technical principles thereof have to be specifically included in the respective transfer pricing documentation.

#### **Health Insurance Contribution**

According to Act XCII of 2003 on the Rules of Taxation (Section 20, paragraph 7c), as of 1 January 2015 (in certain cases) individuals may apply for a refund of their previously paid specific statutory (fixed amount) Health Insurance Contribution.

Based on the new provision an individual residing abroad (but Hungarian resident for Social Security purposes) may apply for a refund of the specific statutory (fixed amount) Health Insurance Contribution paid during the foreign stay (up to the preceding 5 years). The following individuals should qualify as Hungarian resident for Social Security purposes:

- Hungarian citizens who have a registered address in Hungary;
- An individual with the right of free movement and to reside more than 3 months in the country and having a registered address in Hungary; or
- Immigrants, persons settled in Hungary in addition to recognized refugees.

In order to receive the refund the individual should habitually reside outside Hungary (for a long time). Furthermore, the individual should be covered by the medical insurance system of the country of habitual residence.

The refund may be requested by the individual at the tax authority justifying the habitual long term residence abroad and the existence of the social insurance coverage by the appropriate certificates. The practical implementation of the new provisions raises several questions. It is unclear whether the exemption from the specific statutory (fixed amount) Health Insurance Contribution would apply only if the individual in question has compulsory (state) insurance abroad or in the lack of a state insurance. a private insurance may be sufficient. It is also uncertain what kind of certificates would be required for refund purposes, e.g. a residence permit, an address card, a foreign ID card equivalent to the Hungarian Social Security Card would be sufficient or other documents should be presented at the tax authority.

Before applying for the refund of the previously paid contributions, it should be considered whether the individual (during the period impacted by the claim) received any health care services in Hungary, as if Hungarian health care services were received and the contributions are refunded, the individuals should settle the costs of health care services (treatment).

When the individual's Hungarian insurance coverage expires, through the application for the above refund, the private individual may be exempted from the registration liability for Health Insurance Contribution (Form T1011).

# **Contacts**

If you have any questions or comments concerning the above, please contact one of our tax experts below:

# Dr. Attila Kövesdy

Partner in Charge Deloitte Co. Ltd. Tel: +36-1-428-6728

E-mail:akovesdy@deloitteCE.com

## Dr. Gábor Kóka

Partner
Deloitte Co. Ltd.
Tel: +36-1-428-6972
E-mail:gkoka@deloitteCE.com

# Dr. István Falcsik

Senior manager Deloitte Co. Ltd. Customs and global trade Tel: +36-1-428-6696 E-mail:ifalcsik@deloitteCE.com

## Beáta Horváthné Szabó

Director
Deloitte Co. Ltd.
Global employer services
Tel: +36-1-428-8267
Email:bhorvathne@deloittece.com

# László Winkler

Director Deloitte Co. Ltd. International tax Tel: +36-1-428-6683

E-mail: lwinkler@deloitteCE.com

# István Veszprémi

Partner Deloitte Co. Ltd. Tel: +36-1-428-6907

E-mail: iveszpremi@deloitteCE.com

## Péter Gémesi

Director
Deloitte Co. Ltd.
Transfer pricing
Tel: +36-1-428-6722
E-mail:pgemesi@deloitteCE.com

## Dr. Csaba Márkus

Director
Deloitte Co. Ltd.
R&D and government incentives
Tel: +36-1-428-6793

E-mail: csmarkus@deloitteCE.com

# Dr. Eszter Gyuricsku

Director
Deloitte Co. Ltd.
Global employer services
Tel: +36-1-428-6756
Email:egyuricsku@deloitteCE.com

## **Zsolt Sándor**

Director
Deloitte CRS Ltd.
Business Process Outsourcing
Tel: +36-1-428-6692
E-mail:zsandor@deloitteCE.com

## Dr. Gábor Erdős

Attorney
Partner Associate
Deloitte Legal Szarvas, Erdős and
Partners Law Firm
Tel: +36-1-428-6813
E-mail:gerdos@deloitteCE.com

# Dr. Júlia Szarvas

Attorney
Partner Associate
Deloitte Legal Szarvas, Erdős and
Partners Law Firm
Tel: +36-1-428-6465
E-mail:jszarvas@deloitteCE.com

# Dr. Péter Göndöcz

Attorney
Partner Associate
Deloitte Legal Szarvas, Erdős and
Partners Law Firm
Tel: +36-1-428-6974
E-mail:pgoncoz@deloitteCE.com



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

In Hungary, the services are provided by Deloitte Auditing and Consulting Limited (Deloitte Ltd.), Deloitte Advisory and Management Consulting Private Limited Company (Deloitte Co. Ltd.) and Deloitte CRS Limited (Deloitte CRS Ltd.), (jointly referred to as "Deloitte Hungary") which are affiliates of Deloitte Central Europe Holdings Limited. Deloitte Hungary is one of the leading professional services organizations in the country providing services in four professional areas - audit, tax, risk and advisory services - through more than 400 national and specialized expatriate professionals. (Legal services to clients are provided by cooperating law firm Deloitte Legal Szarvas, Erdős and Partners Law Firm.)

These materials and the information contained herein are provided by Deloitte Hungary and are intended to provide general information on a particular subject or subjects and are not an exhaustive treatment of such subject(s).

Accordingly, the information in these materials is not intended to constitute accounting, tax, legal, investment, consulting, or other professional advice or services. The information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

These materials and the information contained therein are provided as is, and Deloitte Hungary makes no express or implied representations or warranties regarding these materials or the information contained therein. Without limiting the foregoing, Deloitte Hungary does not warrant that the materials or information contained therein will be error-free or will meet any particular criteria of performance or quality. Deloitte Hungary expressly disclaims all implied warranties, including, without limitation, warranties of merchantability, title, fitness for a particular purpose, non-infringement, compatibility, security, and accuracy.

Your use of these materials and information contained therein is at your own risk, and you assume full responsibility and risk of loss resulting from the use thereof. Deloitte Hungary will not be liable for any special, indirect, incidental, consequential, or punitive damages or any other damages whatsoever, whether in an action of contract, statute, tort (including, without limitation, negligence), or otherwise, relating to the use of these materials or the information contained therein.

If any of the foregoing is not fully enforceable for any reason, the remainder shall nonetheless continue to apply.

© 2015 Deloitte Hungary