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Tax News+



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In our current newsletter we would like to inform our Clients, that besides the tax law changes, we have introduced earlier in the Breaking Tax News, further legislation changes took place in the past month.

Minimum Wage

As of 1 January 2016 **the amount of the minimum wage and the guaranteed minimum wage has been modified.** The mandatory minimum wage of a full-time employee has been increased to the following amounts:

- in the case of **monthly wages: HUF 110,000,**
- in the case of **weekly wages: HUF 25,550,**
- in the case of **daily wages: HUF 5,110,**
- in the case of **hourly wages: HUF 639.**

For jobs requiring a **minimum of high school or technical education** the guaranteed minimum wage of a full-time employee has been changes to the following amounts:

- in the case of **monthly wages: HUF 129,000,**
- in the case of **weekly wages: HUF 29,690,**
- in the case of **daily wages: HUF 5,940,**
- in the case of **hourly wages: HUF 742.**

In several cases the Act on Personal Income Tax defines the thresholds of allowances and benefits with reference to the current amount of the minimum wage. Accordingly, **the above mentioned changes impact the personal allowances available to severely disabled individuals.** In addition they impact a few elements of in-kind and specifically defined benefits.

Daily allowance

Daily allowances also became subject to change. In the case of domestic secondments, the employee is entitled to a daily allowance if the **secondment exceeds 6 hours and the provision of food and beverages of the employee is not covered at the place of the secondment.** In these cases the employee is entitled to an amount of **at least HUF 500** flat-rate daily allowance. However, employees that are on secondments on a regular basis may be entitled to a monthly allowance. This amount is defined on the basis of the average number of days spent at the place of secondment in a month.

Individuals employed as **drivers** or support to drivers for the domestic transport of goods or passengers may be entitled to **a daily allowance in the amount of HUF 3,000** provided that

- the HUF 500 flat-rate daily allowance is not applied, or
- the monthly allowance is not applied and the employer does not compensate any other expenses related to the secondment.

5% VAT rate on the sale of new residential real estate

As of 2016 the VAT rate applicable to the sale of new residential real estate has been reduced from 27% to 5%.

The reduced VAT rate applies to the following types of residential real estate (as set forth by the Hungarian VAT Act):

- **sale of new residential real estate with a maximum of 150 square meters of usable area,**
- **sale of new standalone residential real estate (e.g. family houses) with a maximum of 300 square meters usable area.**

Based on the above, areas that are not necessary for the purpose of a residential real estate **may not be subject to lower VAT rate.**

The new rules should be applicable to **transactions carried out on or subsequent to 1 January 2016** (i.e. if the date of supply of the transaction occurs on or after 1 January 2016).

The new 5% VAT rate may apply to the supply of residential real estate which were built **prior to 2016**, however, the date of supply is on or following 1 January 2016. Based on the Hungarian VAT Act residential real estate properties and houses qualify as new if either

- the occupation permit is not yet legally binding, or
- the sale of the residential real estate property occurs within 2 years of occupation.

Consequently, if the occupation of the residential real estate occurred in 2015 but the date of supply is in 2016, the reduced VAT rate may be applicable. However, this should be examined case by case.

Simplification of invoicing

As a general rule, as of 2016 **non-resident taxpayers providing services to individuals by means of telecommunication, broadcasting & electronic services** may not be obliged to issue invoices. Nevertheless, an invoice should be issued provided that it is explicitly requested by the recipient of the service. Lacking such a request, the issue of a receipt (with the appropriate data content set forth by the respective legislation) is obligatory.

Positive changes in public procurement rules

The public procurement procedure rules regarding projects receiving state aid have been amended. Furthermore, **two new calls for proposals that are available for large sized companies have been published.**

As we mentioned in our previous newsletter, as a result of the new Act CXLIII of 2015 on Public Procurement ("Public Procurement Act") every project (with a few exceptions) that receives at least HUF 25 million state aid should be subject to public procurement.

However, as a consequence of the recent amendment to the Public Procurement Act, the following types of projects will be exempted from the above obligation:

- state aid for investment set forth by government decisions,
- individual state aid for creating jobs,
- state aid for establishing or developing trainings, workshops,
- state aid for research and development, innovation,
- state aid for investments of large companies for reindustrialization purposes,
- any EU or state aid applied prior to 1 November 2015.

Call for proposal: "Development support of logistics service centres" (GINOP 1.2.5-15)

Within the scope of the call for proposal, small, medium and large size companies, operating in the logistic sector which are able to improve an existing business infrastructure in order to create added value in their range and quality of logistic services, may apply.

Any investment to be carried out outside of Budapest and the county of Pest may receive state aid for the following purposes:

- basic infrastructure expansion related to improvement of logistic services within the borders of the site,
- real estate modernization and investment,
- acquisition of new assets and the related manufacturing license and manufacturing know-how,

- IT development.

The time frame for submission of the application is between 29 February 2016 and 28 February 2018. The amount of the non-refundable state aid which may be received is between HUF 25 million – 100 million.

Call for proposal: "Construction of innovation ecosystem (startup and spinoff)" (GINOP-2.1.5-15)

The aim of the call for proposal is to support the R&D activity, market entry and market presence of innovative start-up companies by encouraging the construction of new incubators.

The incubator company may apply for non-refundable state aid in an amount **between HUF 300 million – 600 million**. This includes a part of the total amount received which may be directly payable to the incubator (First Project Element). The remaining part of the amount which is payable (transferable) to start-ups as final beneficiaries (Second Project Element).

Within the course of the First Project Element the state aid may cover the following:

- activity pertaining to project coordination of the transferable part of the state aid,
- activity related to the incubation.

Within the course of the Second Project Element the state aid may cover the following:

- prototype development,
- validation,
- marketing,
- technology and business development services
- consulting services,
- activities supporting appropriate publicity.

The time frame for the submission of the application is between 25 April 2016 and 25 April 2018. The preliminary evaluation deadline regarding the First Project Element is 30 May 2016.

Judgement in the WebMindLicenses case

The Court of Justice of the European Union ("CJEU") delivered its judgement in a case related to a Hungarian company (C-419/14). This case has dealt with **the legislation related to the place of supply of services performed by electronic means and the abuse of rights related to this issue.**

WebMindLicenses Ltd. ("WML"), a Hungarian company concluded a leasing agreement with a Portuguese company (seated in Madeira) regarding the know-how of a website.

Subsequently, the Portuguese company provided services through the website to private individual customers. Therefore, in line with **the VAT legislation in force during the audited period, these services were subject to Portuguese VAT and a significantly lower VAT rate than the Hungarian one.**

During the tax audit for the period of 2009-2011 **the Hungarian tax authority assessed 21.5 billion HUF tax underpayment.** The Hungarian tax authority supported its findings by the fact, that the utilization of the know-how was not performed for and on behalf of the Portuguese company. According to the Hungarian tax authority it was **WML who provided the services. Therefore, these services should have been subject to Hungarian VAT.** Based on the resolution of the Hungarian tax authority, WML committed an abuse of rights by the licensing of the know-how, in order to apply the lower VAT rate applicable in Portugal.

In its judgement the CJEU declared that **in order to identify the abuse of rights, objective circumstances related to the Portuguese company's physical presence in Portugal** (such as place of business, staff, technical instruments) **should be examined.** By investigating the above, the Hungarian court may declare that it was not the Portuguese company which provided the services from Portugal through the website using WML's

know-how. In this case, **the provided services should have been subject to Hungarian VAT.**

The CJEU declared in its judgement that **the following circumstances "do not appear decisive in themselves" for the purpose of establishing the abuse of rights:**

- the manager and sole shareholder of WML was the creator of WML's know-how, the same person exercised influence or control over the development and utilization of that know-how and over the supply of services,
- the management of the financial transactions, staff and technical instruments necessary for the supply of those services was carried out by subcontractors,
- economic and financial reasons led WML to make the know-how available to the Portuguese company.

The CJEU provided guidance to the Hungarian national court in relation to the investigation. Previously, **the CJEU did not set forth specific considerations applicable to the services provided by electronic means.** The interpretation of this guidance and the evaluation of the relevant facts and circumstances of the case during the course of the procedure by the Hungarian national court remain questionable.

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please contact one of our tax experts below:

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