

Breaking Tax News

Amendments to the 2016 tax legislation

We would like to take this opportunity to inform our Clients about the proposed amendments (“Amendments”) to the 2016 tax legislation. This proposal was submitted by the Hungarian Government on 13 October 2015. The proposal is currently awaiting acceptance by the Hungarian Parliament.

Amendments to the rules of taxation

Reliable and unreliable taxpayers

As of 1 January 2016 the Amendments would introduce the terms “reliable” and “unreliable” taxpayer. Accordingly, full compliance with the legislation (reliable taxpayer) would trigger favorable treatment. In comparison non-compliance (unreliable taxpayer) would trigger a stricter treatment.

A taxpayer registered in the corporate registry or registered for VAT purposes would qualify as a reliable taxpayer if the following criteria are entirely met:

- the taxpayer is operating or is registered for VAT purposes for at least 3 years continuously
- the tax authority did not assess a tax shortage exceeding 3% of the total taxes levied from the taxpayer during the current tax year and the 5 previous tax years,
- the state tax authority did not initiate a legal enforcement procedure (excluding the transfer between tax accounts and exercising retention right) against the taxpayer and the taxpayer has not been subject to bankruptcy, liquidation or cancellation procedure during the current tax year and the 5 previous tax years,
- the taxpayer does not have an outstanding tax payment liability exceeding a net amount of HUF 500,000 on the first day of the affected quarter,
- the taxpayer has not been subject to a tax number suspension or cancellation procedure and the taxpayer has not been placed under an enhanced tax authority supervision during the current tax year and the 5 previous tax years,
- the tax authority did not impose a default penalty (due during the 2 years prior to the current tax year) more than twice on the taxpayer,
- the taxpayer does not qualify as an unreliable taxpayer.

The main benefit to which a reliable taxpayer may be entitled is that in the case of a potential tax audit performed at the taxpayer in question the audit would not exceed 180 days. This preferential timeframe would be applicable if the taxpayer cooperated with the tax authority. In addition, **the maximum**

amount of default penalty and tax penalty would be decreased by 50% compared to the generally set forth amounts **if certain additional conditions would be met**. Moreover, **the tax authority may allow interest free payments to be made in 12 instalments if the total amount owed does not exceed HUF 500,000**. This latter benefit would be available once a year. Furthermore, the Amendments set forth that **VAT reclaims made by a reliable taxpayer would be repaid by the tax authority within a 45 day period as of 1 January 2017**. This beneficial timeframe would be further decreased from 45 to 30 days as of 1 January 2018.

In addition to the above, the Amendments introduce the category of unreliable taxpayers. According to the Amendments, a taxpayer registered in the corporate registry and not under liquidation, winding up or cancellation procedure would qualify as an unreliable taxpayer if one of the four conditions set forth below is met:

- The taxpayer is indicated in the public list of taxpayers as carrying forward a large amount of tax debt based on a tax authority resolution entered into legal force subsequent to 1 January 2016;
- The taxpayer is indicated in the public list of taxpayers as carrying forward a large amount of tax debt as a result of a tax debt due subsequent to 1 January 2016;
- The taxpayer is indicated in the public list of taxpayers as employing unregistered employees as a result of a default committed subsequent to 1 January 2016;
- The taxpayer committed a default triggering a repeated closure of the business premises within a one year period, subsequent to 1 January 2016.

The affected taxpayer would qualify as an unreliable taxpayer during a one year period from the date on which the condition leading to the unreliable status was met. The taxpayer would not qualify as an unreliable taxpayer if it fulfils the outstanding tax debt. In this latter case the unreliable status of the taxpayer would be deleted in the subsequent quarterly qualification of taxpayers. Should an unreliable taxpayer reclaim VAT the generally applicable 75 day repayment deadline would apply.

In the case of unreliable taxpayers, the general deadline for tax authority audits would be extended by 60 days. Furthermore, unreliable taxpayers would be subject to more rigorous treatment in the case that the tax authority assesses a late payment interest, a tax penalty or a default penalty. The tax authority would not be entitled to waive the tax penalty and the default penalty. Moreover, the minimum amount of tax penalty to be assessed by the tax authority on unreliable taxpayers would be 50% of the maximum amount set forth by the general rules. In addition, the maximum amount of default penalty levied on unreliable taxpayers would be set forth as 150% of the maximum amount of default penalty set forth by the general rules.

Additionally, the Amendments set forth the rules applicable upon qualification of reliable or unreliable status of taxpayers. A qualification procedure would take place for the first time within a 30 day period from the end of the first quarter of 2016. The tax authority would verify the fulfillment of the conditions required to qualify as a reliable or unreliable taxpayer on a quarterly basis, in line with the information available on the last day of the affected quarter. The tax authority would inform the affected taxpayers electronically about the result of the qualification procedure. One exception to this rule would occur if no changes take place in terms of the given taxpayer's status. Taxpayers would potentially be entitled to access their current status through the government portal subsequent to the second quarter of 2016. In addition to the above, the Amendments set forth the rules applicable to the qualification procedure in the case of a legal succession. Furthermore, taxpayers would be entitled to submit an objection to the outcome of its qualification.

Amendments to the rules on representation

Based on the Amendments, excise tax administrators would **receive a right to represent excise taxpayers during the course of excise tax related procedures conducted by the tax authority or the competent ministry**. This opportunity would be available if the excise tax officer and the excise taxpayer in question have an effective employment relationship or concluded an engagement agreement with the employer.

Tax registration procedure

Based on the Amendments **multiple rules of the current legislation applicable to the tax registration procedure would become stricter**. The **tax debt thresholds** related to the tax registration procedure would be **reduced from HUF 15 and 30 million to HUF 5 and 10 million** respectively. As a result of the restriction in question, **a broader range of taxpayers would be affected** in terms of both the refusal to issue a tax number and the cancellation of a tax number. In addition, the Amendments would **broaden the scope of individuals investigated during a tax registration procedure**. This Amendment would entail the investigation of the company director and every member of the affected company. The members of the given company would only be investigated if they lack a member with more than 50% of voting rights or a member qualifying as having majority control of the company. An additional effect of the Amendments in question is that the period subject to the investigation would be extended in the following manner. **The tax authority may investigate the period which started on the 360th day preceding the 180th day of the continuous existence of the tax debt**. As an additional condition, the Amendments would set forth the investigation of whether the affected individual is permitted to act as an executive officer.

Tax reporting declaration on the 2015 tax liabilities

According to the Amendments, **the tax authority would assess the tax liability of those individuals who submit the respective declaration** (serving as a request for the tax assessment) **to their employer by 31 January following the tax year subject to the tax assessment**. An individual would be entitled to submit a reporting declaration concerning 2015 by 31 January 2016. The submission deadline constitutes a limitation period. Thus a submitted declaration could not be withdrawn and a missing declaration could not be subsequently submitted. The submission of the reporting declaration would carry the same legal consequences as the submission of a general tax return.

- The submission of a reporting declaration would be subject to the fulfillment of the criteria below:
- The individual does not receive any other income during the tax year;
- The individual does not benefit from any tax or tax base allowance;
- The individual forgoes the right to decide on its tax depositions (with the exception of the 1+1% of its taxes). The individual may opt to offer 1+1% of by means of its employer, in a paper based or an electronic format.

The individual would not be entitled to submit a reporting declaration in the following cases:

- The individual received income taxable separately (e.g. dividend, FX gain) during the tax year;
- The individual intends to settle expenses by means of an itemized expense settlement;
- The individual opts for a tax or tax base allowance (e.g. family tax allowance, newlywed tax allowance),
- The individual opts to submit a declaration on tax depositions relating to voluntary mutual funds, retirement savings, pension insurance;

- The individual received taxable income from a “non-payer” entity, including any income received from foreign companies and organizations irrespective of the nature of the payment.

As a result of the above, individuals employed by foreign employers in Hungary and Hungarian employees working abroad would generally not be entitled to submit a reporting declaration.

Based on the monthly tax returns submitted by the employer, the tax authority would prepare the personal income tax return of the affected individual. The tax authority would only contact the individual if a tax difference is identified.

Individuals not entitled to submit or opting not to submit a reporting declaration would be liable to fulfill their tax reporting obligation by means of a self-assessment. The previously applicable tax declaration and the simplified tax return could be used for the last time in relation to 2015.

Draft tax return

Based on the Amendments, as of 1 January 2017 the tax authority would prepare draft personal income tax returns and send them to taxpayers electronically for review. The draft returns would be sent out subsequent to 15 March following the tax year in question. **These draft returns would be prepared by the tax authority provided that the taxpayer:**

- has electronic access to the Client Gate Portal,
- did not request the employer to prepare the tax return (or the employer refused preparation),
- did not make a tax reporting declaration
- does not qualify as an agriculturalist or self-employed.

The taxpayer (if necessary with the corrected, amended data) may accept the draft return by 20 May. The taxpayer is obliged to settle the tax liability by this date. Furthermore, the tax authority is obliged to refund the repayable tax within 30 days following the acceptance of the draft return by the taxpayer.

Considering the fact that the tax authority prepares the draft tax return based on the information available, the draft tax return should be reviewed and modified in the following cases:

- the tax authority does not have any information about the income received by the tax payer (e.g. income received from a foreign entity which does not qualify as a disburser according to the Hungarian tax legislation),
- the private individual (at his/her own discretion) chooses to claim tax allowances.

If the taxpayer does not accept the draft return by 20 May, the taxpayer is obliged to fulfil its tax compliance obligations by self-assessment.

Integration of tax accounts

The Amendments would provide the possibility of consolidating tax accounts held at the state tax authority and the customs authority (those maintained separately).

Database of public debt free taxpayers

Inclusion of taxpayers in the database of public debt free taxpayers is subject to certain conditions. Based on the Amendments the taxpayer is obliged to fulfil the specified conditions on the last day of the month of submission of the relevant application. In addition the Amendments allows the taxpayer to submit a comment on cancellation from the database of public debt free taxpayers.

Electronic Control System of Road Transports

The purpose of the Amendments is to facilitate the shipment process. **The issuing of the minutes is not obligatory if the tax authority does not make an assessment during the control process.** The exception to the above occurs if the road transporter specifically requests minutes.

Delivery by own means

According to the Amendments, if the addressee or the legally entitled individual (as with postal delivery) refuses receipt of the tax authority documents delivered by own means, then this document should be considered delivered on the date upon which delivery was attempted.

Waiver of default penalty

Based on the Amendments, if the taxpayer (not required to register in the company registry) fails to fulfil its filing and reporting obligation or misses the obligatory deadline, then no default penalty will be levied. Rather the tax authority will issue an alternate deadline and requests the taxpayer to fulfil its original obligations. If the second deadline is unfulfilled only then will the tax authority levy a default penalty.

Value added tax

Tax point date of transactions with periodic settlements

According to the Amendments, in the case of transactions where the parties agree on periodic settlements, **the tax point date occurs on the 60th day** that follows the last day of the settlement period at the latest (rather than the 30th day, as originally proposed). **The aim of the modification is to avoid unnecessary self-revisions.**

Modifications to VAT grouping

The Amendments would allow related parties owned by the state or municipalities to form a VAT group. Therefore taxable persons who are considered related parties solely due to the fact that they are owned directly or indirectly by the state or municipalities, would not qualify as related parties from a VAT perspective.

Exemption from invoicing obligation

Based on the Amendments, service providers carrying out international air transport of passengers would be exempted from issuing invoices, with the exception of cases where the customer explicitly requests the issuance of the invoice. This regulation would be applicable to transactions which **are performed as of 1 January 2016.**

Amendments to the act on duties

The Amendments would exempt the acquisition of other environmentally friendly vehicles from transfer tax (in addition to vehicles powered by electric motors). **This exemption would qualify as “de minimis” aid.**

Furthermore, in order to upgrade the vehicle fleet of logistic and freight companies, the Amendments would exempt the acquisition of industrial vehicles from transfer tax.

In order to support the maintenance and renovation of historical monument buildings, the related transfer tax would be reclaimable. Nevertheless, the beneficiary would only be eligible for the reclaim if the construction work is initiated within 1 year and completed within 5 years following the date of the acquisition.

In addition, the Amendments would eliminate the rules which stipulate that duties must be paid by duty stamps.

Amendments to local taxes

The Amendments (in addition to the proposed changes to the local taxes as a consequence of the introduction of IFRS described in our newsletter in October 2015) contains the following modifications.

According to the current rules, **7.5% of the 'electronic' toll charges** (payable by transporting vehicles above a certain threshold) **accounted for as expenses for the tax year may be deductible from the payable local business tax.** According to the Amendments, the fee charged and accounted for with respect to the use of any tolled motorway, main and regular highway as well as the toll incurred abroad would be included in the above mentioned deductibility option.

Companies with numerous permanent establishments incurred significant administrative burdens when submitting tax returns. In order to decrease this administrative burden (of excessive paperwork), the possibility of completing local business tax related compliance obligations would be possible by means of the software and system applied for state tax purposes (AbevJava - ÁNYK). The tax authority would forward the submitted tax returns to the local government. The tax authority would not review the content and formal requirements. The simplification would be available as of 1 January 2017.

Special Taxes

The Amendments would clarify the rules pertaining to legal succession of credit institutions in relation to the special tax applicable to financial institutions. Furthermore it would set forth that credit institutions would be obliged to pay the special tax based on their 2014 balance sheet total. **This would ensure that the tax liability taken over from the legal predecessor would not have to be paid by the successor.**

Vehicle, company car and registration tax

According to the Amendments, **vehicle and company car tax exemption (in addition to the operation of electronically powered vehicles) would be applicable to the operation of other environmentally friendly vehicles.** This exemption would be considered as 'de minimis' subsidies. The Amendments would specifically set forth which vehicle would be considered as being environmentally friendly.

An amendment related to transporters is the implementation of "assembly taxation". As a consequence of this new tax, the method for determining tax bases for vehicle tax purposes regarding trailer trucks would be modified. In addition, the tax liability pertaining to semi-trailers would be cancelled.

In accordance with the Amendments, registration tax would be 0 HUF for electric vehicles as set forth in the applicable decree (purely electric vehicles, plug-in hybrid electric vehicles, enhanced ranged electric hybrid vehicles) and zero emission vehicles.

Environmental Tax

The Amendments would broaden and modify certain environmental tax related definitions. Furthermore, it would also add new definitions to the currently applicable ones. **The following definitions would be subject to modification:**

- packaging;
- commercial packaging;
- commercial packaging product;
- flat-rate environmental tax;
- re-usable packaging product.

Due to the Amendments, **the following new definitions would be included in the environmental tax legislation:**

- component of packaging;
- packaging-element;
- part of the packaging;
- packaging waste;
- building product;
- motor vehicle;
- craft industry product;
- craft industry activity;
- large fixed industrial equipment;
- environmental tax shortage;
- environmental tax margin;
- environmental tax debit;
- customs tariff code.

The clarification of the definitions was required due to the harmonization of the environmental tax legislation with the Act on Waste. As a result of the Amendments the definition of those taxpayers who are subject to environmental tax would be extended to individuals liable for taking products into inventory and also those individuals who are liable for removing packaging. In addition, due to the Amendments, in the case of export carried out in the framework of triangular transactions, the products subject to environmental tax may also be transported abroad by the domestic or foreign customers, rather than solely by the manufacturer. Furthermore, the administrative burden of the participants involved in an export triangular transaction would decrease significantly. While at the same time, the competitiveness of the entities would increase.

The regulations regarding individual waste management would also be modified. Due to the Amendments, an annual tax reporting period would be determined for the individual waste managers. Accordingly, they would be required to file their tax returns annually. The purpose of the amendment would be to decrease the administrative burden of the individual waste managers.

The compliance liabilities of the taxpayers choosing to apply the individual waste management method would be similar to those choosing to apply the collective performance. Accordingly, in addition to the annual compliance liability, taxpayers would also have tax advance payment and submission liability. The deadline for the tax advance payment liability would be 20 December.

The justification of administrative liabilities has also been revised. As a result of the revision the partial liability of obligatory bill-endorsement would not be applicable to packaging materials or advertising material. Further clarifications would be related to the contractual takeover of environmental tax liabilities. Accordingly, the transferee would be the entity responsible for the reporting of the environmental tax liabilities towards the tax authority.

The legislation regarding the flat-rate environmental tax payment would be supplemented. This form of payment may also be chosen in the case of motor vehicles. In order to facilitate the enforcement of this legislation, its structure would be modified. The environmental tax penalty would be harmonized with the new definitions in the legislation. These clarifications in the new system of sanctions aim to increase legal certainty.

The act on environmental taxes would be supplemented by a new annex. This annex would set forth the data regarding the weight of the products subject to environmental tax that are generally built into motor vehicles. Furthermore, it would also determine the amount of the flat rate environmental tax (rounded off to thousand HUF) of the product parts of those motor vehicles that are listed under certain customs tariff codes.

Based on the Amendments, the definition of circulation would be broadened to include long-distance sale transactions (online trade). By means of this modification, the amendment aims to regulate the market disadvantages arising between domestic online traders and the foreign salespersons. This would be achieved by broadening the environmental tax liability to include two-party transactions that are aimed at acquiring products from abroad and as such are subject to environmental tax (previously, solely the three-party transactions were subject to such liability).

Should you be interested in this scheme we are more than pleased to help you based on our earlier experience on this and similar calls for applications.

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

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