

Tax Newsletter

Expected amendments for 2017 to the tax legislation according to draft Law No. T/12741

November 2016



The Hungarian government submitted its proposals for certain tax law changes to be enacted for 2017 on 28 October 2016. Hereby, we summarize the most important proposed amendments.

With respect to the proposed personal income tax related changes, we highlight that the first marriage tax base allowance could be claimed together with the family tax base allowance (for 2015 as well). There are also significant proposed amendments to the new tax return filing option (tax return proposal); and the 6 percent health care charge on interest income and on income from long term savings accounts is expected to be abolished.

As far as corporate income tax is concerned, the proposed amendments mostly affect the incentive elements of the law. Projects and investments in start-up ventures in the area of Energy Efficiency will be supported. Furthermore, a tax allowance would be available in relation to live music services/performance. Besides of the above mentioned cases, the conditions to fulfill in order to benefit from the development tax allowance will become easier.

Procedural rules of taxation

- Tax authorities now have the power to ensure that it is only taxpayers carrying out actual business activities (e.g. non-dormant entities), who receive positive (reliable taxpayer status) judgments. To qualify here, entities would need to show a positive sum of tax payable as an extra criteria.
- The National Tax Authority can designate a taxpayer as risky if he is registered at a residence provider and has been fined for the obstruction of a tax procedure.
- The draft provides for automatic control units to be placed on every food vending machine. The taxpayer in question is obliged to provide information to the Tax Authority from the data stored in these units on a regular basis. The data provided can be used by the Tax Authority in order to monitor the taxpayer.
- There is a new option for the Tax Authority specified in the draft allowing them to minimize risks connected to the collection of taxes. According to the amendment, in terms of the risk analysis of certain taxpayers, the Tax Authority will have the option to initiate a so-called supporting action to provide professional assistance to those taxpayers considered risky as a result of the analysis (e.g. reminding them to carry out a self-revisions or getting in touch with them in order to work together on the correction of any mistakes identified). In these cases, no sanctions can be applied by the Tax Authority.
- This draft introduces the concept of the so-called representation letter. In cases of an ex-post investigation regarding the tax returns of an individual taxpayer, the Tax Authority has the right to demand that the taxpayer provide them with a representation letter regarding all financial and other information necessary to calculate the tax base of the taxpayer. This procedure would mostly be carried out in the case of a wealth gain investigation.
- The draft rules that in cases of a modification or an extension of the validity of an advanced pricing agreement (APA) issued by the National

Tax Authority, such an agreement cannot be appealed against at tax administration level, it can only be subject to judicial review.

- Concerning VAT, as of 1 July 2017 a special default penalty will be introduced for cases of non-compliance with online data provision obligations. Accordingly, if a taxpayer does not fulfil its data provision obligations or if the data provided is incorrect, false or incomplete, the maximum leviable default penalty will be calculated based on the number of non-compliant invoices in question multiplied by the maximum leviable default penalty for that particular category of taxpayer, as determined by law. The recent law amendment now allows the tax authority to impose a significant default penalty on taxpayers, i.e. a penalty that is not based on the VAT amount indicated on the invoice, but on the number of non-compliant invoices. That said, the tax authority must take into account the basic principles of the rules of taxation, specifically the principles of proportionality and equitability when imposing any default penalty, since the mentioned amount is a maximum threshold, and a lower amount may be imposed depending on the extent of the non-compliance.

Personal income tax

- First marriage tax base allowance: From 1 January 2017 the first marriage tax base allowance would be applicable in the first 24 months of the marriage – for couples married after 31 December 2014 – even if the couple also became entitled for a family tax base allowance in the meantime (i.e. the family tax base allowance and the first marriage tax base allowance were claimable for overlapping periods). The allowance can be claimed retrospectively for 2015 by self-revision of the 2015 tax return.
- Benefits in kind: According to the draft bill, from 1 January 2017 the tax base of benefits in kind would be multiplied by 1.18 – currently 1.19 is applicable. The modification is in line with the preceding decrease of the personal income tax rate from 16 to 15 percent. In addition, the draft bill would specify more precisely which posted individuals can be provided with specific defined benefits. The proposal would also abolish the restriction regarding meal vouchers to be provided as specific defined benefits. These two modifications would come into effect following the passing of the law.
- Accommodation eligibility criteria: In connection with the previous modification in spring 2016,

the draft bill contains further specifications regarding the definition of eligible rooms and eligible family members moving into the accommodation. Furthermore, the siblings of the eligible individuals could also be counted as eligible family members. This new regulation would come into effect following the passing of the law.

- Tax return declaration, tax return proposal: From the beginning of next tax year, tax return declarations cannot be filed, therefore, in accordance with the draft legislation, regulations related to tax return declarations would be overruled from 1 January 2017. In addition, according to the proposed amendment, certain rules regarding the tax return proposal would be introduced in the Act on Personal Income Tax.
- Long-term saving accounts (TBSZ): According to the draft legislation, from 1 January 2017, long-term saving accounts may be extended even with the partial reinvestment of savings after the five year tax free period for the original savings account has lapsed – provided that the amount of the re-investment is at least HUF 25,000 per tax year.
- Assignments, business trips: The draft legislation would amend the definitions of 'assignment', 'business trip' and the 'workplace in case of assignments' so that the definitions are in line with the terms used in the new Labor Code. This new regulation would come into effect following the passing of the law.
- Foreign tax resident artists, performers: From 1 January 2017, the draft bill would extend the application of the special taxation rules to all members of a film crew. Furthermore, this special taxation could also be applied even if the eligible individuals spend more than 183 days in Hungary. In addition, according to the proposal, the travel and housing reimbursement may be provided tax free to these foreign individuals while, in return, the draft would abolish the 30 percent tax free lump sum expense claim opportunity.

Further modifications:

- In connection with the previous amendment in spring 2016, from 1 January 2017, the travel allowance of individuals for their travel by car would be increased from HUF 9 to HUF 15 per kilometer in every relevant part of the Act on Personal Income Tax.
- From 1 January 2017, investment providers, disbursers and account manager institutions would have to file their annual control data

reporting with the Hungarian tax authority by 31 January in the year following the tax year – instead of the previous deadline (15 February in the year following the tax year). This amendment would be applicable on income from long-term saving accounts (TBSZ), income from controlled market transactions and the income from pension saving accounts (NYESZ). The aim is to allow enough time for the Hungarian tax authority to prepare the tax return proposals.

- According to the draft legislation, the tax free treatment of waived claims from loans and lease contracts would be extended to cover certain new cases – subject to specific criteria. This new regulation would come into effect following the passing of the law.

Healthcare charge

- According to the draft legislation, the 6 percent health care charge on interest income and on income from long term saving accounts would be abolished from 1 January 2017. The same would happen to the 20 percent health care charge on hospitality services provided by individuals. Furthermore, from this date, only two health care charge rates would remain in effect: the 14 percent and 27 percent rates. In line with this, the current 15 percent health care charge payable by small agricultural producers would also be decreased to 14 percent.

Social tax

- According to the draft law, from 1 January 2017 the income paid to an individual for a previous period in which he was not covered by the Hungarian social security system, would not be considered as a base of social tax.

Special taxation method for small-scale taxpayers

- Based on the draft legislation, from 1 January 2017 the income limit for electing this taxation method would be increased from HUF 6 million to HUF 12 million. In addition, the limitation period for re-electing this taxation method after termination of eligibility would be decreased from 24 months to 12 months.

New method for personal income tax return filing (General Tax Act rules)

- Tax return proposal: The draft law states how the procedure described in the previous proposal (which have not get into force yet) would be modified. Based on the previous regulation, this method would have been applicable only for individuals who have registered on the government portal. According to the draft legislation, this tax return filing method may be elected by individuals who have not registered on the government portal in cases where they have sent a request to the Hungarian tax authority by 15 March in the year following the calendar year concerned. In addition, it would be specified which type of income and type of taxes and charges will be included in the tax return proposal prepared by the Hungarian tax authority. Furthermore, the tax return proposal becomes a tax return if no self-revision or amendment is filed by the individual by 20 May (tax return filing deadline) in the year following the calendar year concerned. This rule would not be applicable to individuals who have filed a letter of extension.
- One further personal income tax related proposed amendment to the General Tax Act is that the reporting obligations of disburers regarding dividend income would be simplified.

Corporate income tax

- A number of clarifications are proposed which will affect, amongst others, the allowances regarding the renovation and maintenance of monument buildings. These measures were introduced in the Hungarian tax law package earlier this year. The clarifications will also cover additional sports support and the deductibility of free of charge transactions.
- One of the more striking points of the proposed changes is that the requirements for an entity's eligibility for the development tax allowance seem less stringent and the tax allowance will be available more widely.
- A new type of tax allowance related to energy-efficiency investments will be introduced.
- The proposal provides allowances to companies investing in so called 'early-stage ventures' (i.e.: startup companies) if these initiatives meet certain complex requirements. Additionally, certain tax allowances would be applicable in relation to live music services
- Essentially, the most significant changes affect different incentives.

Proposed incentive related amendments regarding tax base adjustments

- Regarding the maintenance of monuments and buildings under special local protection, it has been clarified that the allowance might be used for the maintenance accounted as an expense in the given year. Furthermore, the range of properties qualifying for this incentive is to be clarified. In the future, not only amounts spent on such renovations but also investments with cultural heritage purposes will qualify for the incentive, namely by way of the tax base being reduced by twice the declared expenses. The above tax base reduction might be used in the year of completion of the renovation or investment and also in the subsequent 5 years, based on the taxpayer's decision.
- According to the proposal, in cases of the acquisition of ownership in a startup venture, the tax base might be reduced by two and half times the value of shares or one and a half times the value of shares depending on the tax rate applied by the acquiring company. The tax base reducing item might be applied over four tax years in four equal amounts up to HUF 20 million per year. This allowance would be considered as a de-minimis subsidy. The above incentive might also be applied in relation to any capital increase following the acquisition of the shares. Complex conditions are planned to be introduced regarding the repayment of the subsidy

Proposed amendments regarding allowances from the computed tax

- Important changes are planned to be introduced regarding the Development Tax Allowance. The requirements in terms of employment expansion relating to investments in excess of HUF 3 billion will be decreased from 150 to 50 persons. For investments in excess of HUF 1 billion, the requirement will be reduced to 25 persons. As an alternative to the employment condition(s), the wage increase requirements will be halved. The requirements for SMEs will be eased as well. As an example, a medium-sized entity's employment extension by 10 persons would only be required if that entity completes an investment in excess of HUF 500 million.
- A new type of tax allowance will be introduced in order to assist the completion and maintaining of energy-efficiency projects. This discount cannot be applied if development tax allowance is applied on the investment, and the new scheme will not be considered as a regional subsidy. Accordingly, the intensity ratio will be 30% in all regions for

large companies, but this might be increased to 40% for medium sized companies and to 50% for small sized companies. The taxpayer entity must prove the energy efficiency effects by way of a certificate. A Government Decree is expected to be published before the legislation comes into force on 1 January 2017. The decree would set up the framework governing how the above certificate is issued and the detailed rules for this tax allowance will be included in the decree as well. The mandatory operation period of the investment will be 5 years. The allowance might be applied in the first tax year following the year of putting the investment into operation, and in the subsequent 5 tax years.

- 50 % of the expenses related to live music services can be applied for as a tax allowance. If the tax allowance is utilized, the accounted expenses related to the above mentioned services would not be deductible. This tax allowance qualifies as a de-minimis subsidy.

SECTION 29/ZS

- As a result of the uncertainties arising from the interpretation of the Settlement Act, the draft amends Section 29/ZS of the Act on Corporate Income Tax. The amendment aims to simplify the settlement of any expenses resulting from the Settlement Act for financial institutions. These modified rules can be applied in order to calculate the tax liability for both FY2015 and FY2016.

IFRS

- The most important change in the present proposal grants an opportunity to the taxpayer to choose from different options, and this would affect the calculation of the IFRS transition difference. The options:
 - Continue the tax treatment of all existing fixed and intangible assets from a corporate income tax perspective, and determine any future tax base the same way as the taxpayer did before the IFRS transition;
 - Continue the tax treatment of all existing assets and liabilities from a corporate income tax perspective, and determine any future tax base the same way as the taxpayer did before the IFRS transition;
 - Choose to apply IFRS accounting on all assets and liabilities from a corporate income tax perspective.
- In line with the above options, the transition difference may only be calculated in relation to

those assets for which the taxpayer chooses to apply the IFRS treatment. Furthermore, when determining the transition difference, future tax bases should be taken into consideration rather than the future profit before tax figure;

- The present proposal defines the concept of the acquisition value calculated in relation to corporate income tax (tax value) and handles the related depreciation issues;
- To avoid double taxation, in the case of a joint arrangement (IFRS 11), the tax base should be determined in accordance with the rules set forth in the local GAAP (Hungarian GAAP);
- The grant of shares under an Employee Stock Ownership Plan through a designated organization should also be treated in the same way (from a corporate income tax perspective) as if the shares had been granted directly by the Employer. The proposal also handles the different treatment of Employee Stock Ownership Plans under IFRS and under local GAAP;
- The proposal further clarifies contributions in-kind between non-related entities;

Local business tax

- The concept of revenue is further defined to include the income from activities that will no longer be performed by the company and the expenditures related to these activities (cost of goods sold, intermediated services, etc.);
- Revenues from joint arrangement (IFRS 11) should be excluded from the local tax base, therefore these should be determined in accordance with the local GAAP;
- The concept of non-invoiced rebates is further clarified in terms of revenue, cost of goods sold and material costs;
- The concept of revenues from non-ordinary activities is further defined, now to exclude any revenue generated from the sale of assets when determining the total revenue for local tax purposes;
- The concept of an exchange of goods or services that are not shown as part of the revenue is further clarified with special focus on the definition of the cost of goods actually traded;

- The present legislation was considered to be misunderstandable regarding the minimum tax liability rules and its payment intervals; therefore the application and the exemption rules are further defined in this respect.

Transfer duties

- The legislator makes a clarification concerning the tax advantage given to housing and leasing companies. According to the draft, these companies may now pay a reduced amount of transfer duty of 2% or 3% (of the property's market value). The 3% tax rate is applied if the company undertakes to sell the property within the following 2 years. The 2% rate is applicable if the company also undertakes that the subject of the sale contract will be realized within the following 2 years.
- The draft sets out that no transfer duty has to be paid for obtaining certain land-use of agricultural and forestry lands.
- Given that the duration of a lease is normally longer than 5 years (statute of limitation), the draft lays down a special limitation rule for transfer duty payment orders in cases of a non-realized lease contracts. The draft also includes limitation rules for cases where the resale does not occur, or where it does occur but the corresponding contract is terminated or cancelled.

Advertising tax

- The proposal would specify the definition of taxable person in case of advertisements published over the internet. Accordingly, the person who is entitled to decide upon using the web surface for advertising purposes and approve of the publication of advertisements should be considered as the taxable person for advertisement tax purposes.
- Per the proposal, as from 1 January 2017, advertisement publishers registered in the publicly available Tax Authority database could be deleted from the registry, if – amongst others – their net outstanding tax liability exceeded HUF 100.000 on the first day of the month.
- According to the proposal, the tax base consolidation rules applicable for related parties whose status resulted from a demerger after 15 August 2014 would be abolished.

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