

# GMS Flash Alert

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## Hungary - New Tax Law Impacts Social Security and Employees on Assignment

A new tax law<sup>1</sup> in Hungary has significantly modified some portions of the country's personal tax system. With respect to the personal income-tax related part of the law, in this *GMS Flash Alert* we highlight the changes relating to the cafeteria system, the expected (and increased) mobility-related benefits like the tax-free housing benefit provided for mobility purposes, and the increased tax-free part of the travel-to-work allowance offered to employees for their travel by car, amongst other measures.

From a social security perspective, the modifications relating to exemptions for third country nationals in Hungary are particularly significant and we discuss these in brief below as well.

### WHY THIS MATTERS

The measures described in this newsletter may have a considerable impact on assignees into Hungary who are taxable in Hungary as well as assignees from Hungary who remain taxable in Hungary. The measures introduce new definitions of assignments and impose new restrictions on allowances and benefits accorded employees. In addition the exemptions and contribution periods for social security as far as third country nationals are concerned are undergoing modification, which could catch more third country nationals in the social security net and potentially raise assignment-related costs for employers with assignees in Hungary.

It is advisable, given the breadth and detailed nature of the changes introduced, that companies sending assignees to Hungary or with Hungarian assignees outside Hungary still taxable in Hungary consult with their qualified tax professionals to understand the impact of these changes on their assignees, their compliance obligations, and the cost-impact on their assignment programs.

## Background

The Hungarian government published its latest tax proposal in May and the legislation embodying the proposal was approved by Parliament on 7 June 2016, nearly entirely in its original form as well as with later modifications to the proposals. Its publication in Hungary's official gazette, *Magyar Közlöny* (no. 87), was on 15 June 2016.

## New Definition for Assignments

The law slightly modifies the definition of an assignment. According to this modified definition, an entity's work activity will not be required to be carried out in a different location than the workplace specified in the individual's employment contract. To qualify as an assignment, it will be sufficient if the employer instructs the employee to travel for business purposes.

## Benefits-in-Kind and Allowances

### Cafeteria System

The cafeteria system will be significantly modified as of 1 January 2017. Only cash benefits up to HUF 100,000 and "SZEP card" benefits will be considered as benefits-in-kind. Several other popular benefits measures such as meal allowances, meal vouchers (Erzsébet cards), public transport season tickets, voluntary fund contributions, etc. will not now be deemed to be benefits-in-kind – these benefits will be subject to less favorable tax rates in the future.

The annual limit for allowable benefits-in-kind that may be granted remains at HUF 450,000. Consequently, it is suggested that companies re-consider their cafeteria systems, e.g., including more tax-free benefits in their cafeteria systems could be an option.

### Housing Benefit

The housing benefit provided by an employer to its employee(s) for mobility purposes will be regarded as (partially) tax-free under certain circumstances. During the first two years of an employee's employment, for the allowance provided for mobility purposes, up to 40% of the minimum wage will be considered as tax-free; and during the second two years, the tax-free limit will be 25% of the minimum wage; and 15% of the minimum wage during the fifth year of the individual's employment.

There are some important conditions which should be fulfilled in these cases:

- the rental fee paid should be backed up by invoices;
- the employee should have a minimum 36 hours/week employment contract with the employer that provides the benefit;
- there should be at least 60 kilometers of distance between the employee's permanent home and the workplace, or the travel time of the round-trip between the two places by public transport should take more than three hours.

Even if this allowance results in further administrative burdens on the employer's side, it is worth considering adding this possible new element to a company's benefit (cafeteria) system.

### Child-Care/Nurseries/Kindergarten

Based on the latest law amendments, not only day-nursery services, but also pre-school (kindergarten) services can be provided as tax-free benefits.

## **Health-Care Benefits**

According to the amendments, benefits provided by an employer to its employees for certain health-care services could be considered as tax-free benefits as of 1 January 2017, as long as certain conditions are met. Health-care services to be provided as tax-free benefits will be listed in a separate decree.

## **Car Travel Allowance**

The tax-free part of travel allowances given to employees for their travel by car between their homes and their work-places will be increased from HUF 9 to HUF 15 per kilometer.

## **Administration Eased**

### **Family Tax Base Allowance**

In order to decrease administrative burdens, individuals will not need to make a new declaration for family tax base allowance purposes if the only change in their circumstances is that their child was born – if they had already applied the family tax base allowance regarding a conceived but not yet born child.

Further easing of administration in relation to declarations for family tax base allowance will be achieved as follows: the declaration made by the employee no longer needs to be countersigned or acknowledged by the employer of the spouse.

Furthermore, the law slightly modifies the definition of a dependent as of 1 January 2017. The definition of any children being regarded as dependent is to be extended.

## **Investments, Savings, and Employee Share Plans**

### **Long-term Savings Accounts**

A slight update to the legislation is expected to result in a change whereby an individual can hold only one deposit-type and only one portfolio-type of long-term savings account with an investment provider; this restriction will not be applicable for accounts to be rolled over.

### **Employee Share Plan Prospectuses**

From 1 January 2017, one copy of the prospectus of the qualified Employee Share Plan (in cases of direct share or option provision plans) should be sent to the Hungarian tax authority by the 20th of the month following the month when the program commenced.

### **Shareholders and Company Raising Capital**

In accordance with the new Civil Code, the law amendments stipulate that an individual shareholder of a company will not realize taxable income when the company raises its share capital and when the individual fiscal contributions are financed from undistributed profits of the company.

### **Definition of Dividend**

The definition of dividend will be slightly modified; income derived from alternative investment fund units such as investment units issued by an alternative investment fund could be treated as dividend income as of 1 January 2017.

## Other

- The law amendments contain modifications regarding the certification of an individual's foreign tax residence status.
- The legislation covering the tax allowance of pension insurance will be updated.

## Social Security

### Third Country Nationals and Exemption Period

Hungarian legislation provides a two-year long social security contribution and social tax exemption period for third country national individuals who are employed by a foreign company and who are assigned to Hungary. This exemption is available if the assignment is no longer than two years.

Currently, if the planned duration of a shorter assignment actually runs longer than two years, an extension to the exemption could be applied under certain conditions.

According to the law's amendments, the possibility of extending the exemption without a time limit is now abolished. Neither the social security contributions nor the social tax exemption will be allowed to last longer than the end of the second year following the beginning of the assignment.

In cases of assignments where the extension of the exemption was applied for on or before 31 December 2016, the exemption will last no longer than up through 30 June 2017.

This regulation affects the assignments of third country nationals where the extension is already applied for; therefore it might be worth reconsidering the duration of such assignments.

### Totalization Agreements and Impact on Unilateral Two-Year Long Social Security Contribution Scheme

Based on further amendments, the unilateral two-year long social security contribution and social tax exemption could be applicable for assignees even if Hungary has a social security agreement ("totalization agreement") in place with the assignees' country of origin, although the assignee may in fact be covered by the social security system of a third country (i.e., one without a social security agreement with Hungary in place). To apply this exemption, supporting documentation about the individual's social security coverage should be made available, providing that the further assignment-related criteria are met. This rule can also be applied to European Economic Area (EEA) citizens if they are not covered by the related EEA Regulation in the field of social security coordination and if they are covered by the statutory social security system of a third country.

### Other Social Security Measures

- A new social tax allowance will be available in relation to entities' own research and development expenses, but only for those entities that qualify for the new allowance criteria.
- The amount of the health service charge will increase to HUF 7,110/month as of 1 January 2017.

## FOOTNOTE:

1 Act LXVI of 2016.

## RELATED RESOURCE

This article is excerpted from the *TaxAlert* (June 2016), a publication of the KPMG International member firm in Hungary.

## Contact us

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