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PS NEWSLETTER

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CHANGES OF TAXATION — NOVEMBER 2017, HUNGARY

Although the changes in taxation procedures usually take a smaller part in our regular annual newsletter, this year they represent the most significant modifications.

Furthermore, almost all tax related acts will be modified from 2018, but overall, these changes are marginal compared to previous years, and most of them will have a positive impact for companies and individuals. Some will further specify changes introduced earlier.

A part of modifications adopted in the middle of 2017 are only applicable from tax year 2018. In this newsletter we once again list the changes which we consider to be relevant.

I TAX CHANGES

Personal income tax

Until recently only the concept of 'training outside the school system' was defined by the law. The new amendments introduce also the concept of '**school based training**' which shall cover trainings where the participant is in a student relationship with the school. Furthermore, it also covers foreign

trainings providing elementary, secondary or higher vocational education.

It is a small amendment that tax on the income from **the sale of immovable property** will be reclaimable if within two years from filing the tax return it is **utilized for housing purposes in retirement homes** or in similar institute for own or close relatives' use. Up till now, the related allowance could only be used to offset the future tax payable.

Previously **expenses** have only been recognisable for those **vehicles** which were owned by the taxpayer or by the spouse. The possibility for recognizing the costs for business use has broadened for the vehicles which are owned by the taxpayer's close relatives.

The cost of operation of vehicles provided on an ex-gratia basis by a distant relative will remain non-deductible. The abovementioned is also equally applicable for self-employed individuals, individuals using itemized expense accounting and for private entrepreneurs.



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The conditions under which employers can **provide housing support promoting the mobility of employees** are becoming more favourable from 2018.

The maximum amount of the tax-free support will increase

- to **60% of the minimum wage** in the first 24 months of the employment (up from 40%) and
- to 40% of the minimum wage in the second 24 months of the employment (up from 25%).
- to 25% of the minimum wage for another 12 months thereafter (up from the current 15%).

Due to the increase of minimum wage the upper limit of this allowance can be **HUF 82,000 monthly** in the first two years of employment.

Requirements prescribed for eligibility have also changed for the better. According to the new regulations the support will also be **available for fixed term employment contracts** provided the employee does not have more than 50% ownership in a residential property which is

- either located within a 60 kms of the workplace
- or which is reachable within 3 hours by means of public transportation from the workplace.

For the above two criteria the distance between the workplace and the place of residence not the registered address should be considered.

It has been clarified that in case of **temporary hire**, the client (using the temp) is considered to be the employer together with its related party companies.

The amount of the **family tax base allowance** after 2 children increases to HUF 116,670 per child, which means net HUF 5,000 compared to the claimable allowance in 2017 (HUF 100,000 per child) The amount of the available tax base allowance will remain unchanged after 1 child (HUF 66,670) and after 3 or more children (HUF 220,000 per child).

Due to the further decrease of the rate of social contribution tax and healthcare contribution, 84% of the private individual's income shall be treated as tax base in case the individual is obliged to pay these taxes (assuming the individual cannot recognize them as expenses and will not be reimbursed for these).

According to the Government Decree on Student Loan, from 11 November 2017 **tax free benefit** can be provided by the employer to its employee for supporting tuition loan pay-offs

up to the amount of the mandatory monthly installment but **maximum to 20% of the minimum wage** (in 2018 maximum HUF 27,600 per month).

The statement regarding the 1% personal income tax liability donation to a church shall be filed by the individual to the authority only one time and the statement would be applicable for the future tax years unless the individual makes a modified statement.

Tax declaration prepared by the employer

In the future, employers can only prepare the tax declaration on behalf of the employees in case the law specifically prescribes that obligation.

This is a significant modification in personal income tax provisions, due to the fact that the possibility of **the employer's tax assessment is withdrawn from 2018**. We would like to emphasize that employers are not allowed to prepare the employees' tax return for 2017 either.

Individuals will only be able to determine their personal income tax by self-assessment from tax year 2017. This can be done independently or by accepting the draft tax declaration provided by the tax authority.

According to the modifications – with the exception of private entrepreneurs – the tax authority will prepare the draft tax declarations for all individuals.

Social security

The **social contribution tax** will decrease with further 2,5%, from the current 22% to **19.5%** as of 1 January 2018.

Healthcare contribution

According to the changes in the summer of 2017, the **leasing of immovable property will not be subject to 14% healthcare contribution** from 2018, not even for rental income exceeding HUF 1,000,000 in the tax year. The related reporting obligation will also be abolished.

In line with the social contribution tax decrease the rate of the health contribution will also decrease to **19.5%**.

The modification will have an impact on the cafeteria system. The tax burden on the certain specified benefits **will decrease** from 43,66% to **40.71%**.

Minimum wage, guaranteed wage minimum

The **minimum wage** will increase from 1 January 2018 to **HUF 138,000 per month**, the guaranteed wage minimum will increase to **HUF 180,500 per month**.

Value added tax

The applicable rate for **internet services** will be reduced from current 18% to **5%** as of 1 January 2018.

At the same time the definition of internet services has been clarified which states that net-working services will not be considered as internet access services under the VAT regime. Consequently, access and/or connecting services and related ancillary services will not fall under the 5% preferential tax rate.

The **VAT rate will be 5%** for fish for human consumption and pork products and also food and beverages supplied through **restaurant services** from 2018.

Supplying real-time invoicing information to the tax authority related to domestic sales invoices issued by an invoicing software will likely cause significant modification in activities around invoicing from 1 July 2018, however the ministerial decree which would specify the rules of online invoicing has not been issued yet.

As a new obligation from 1 July 2018, **invoices issued from a pre-printed block of invoices have to be reported through an electronic portal to the tax authority** with the following deadlines:

- if the VAT amount equals or exceeds HUF 100,000 but does not exceed HUF 500,000, the time limit is 5 calendar days after the issue
- if the VAT amount equals or exceeds HUF 500,000, the time limit is 1 calendar day after the issue.

Corporate income tax

The 10% threshold for participation exemption has been removed from the law from 2018, which means that regardless of the participation size the corporate tax base relief may be applicable.

Other conditions for eligibility (e.g. 75-days deadline, one-year commitment period) will remain unchanged.

As we have mentioned in our previous newsletter in July 2017, **to promote the mobility of employees** even further, an additional tax benefit will be added to the already existing ones from 1 January 2018. The construction value of rental apartments built for the employees and their close relatives will also decrease the employer's corporate income tax base. The tax base deduction may be utilized in the year when the construction was completed, up to the amount of the book value. Employing at least one researcher-developer will cease to be a requirement for qualifying as a **'start-up enterprise'**.

Further modification on allowances for start-ups is that a ministerial decree has been issued which contains the register of start-up companies and supporting companies and also regulates further provisions to validate the potential tax allowance. It has been clarified that general interest **associations of pensioners** fall under the same regulation as school cooperatives in the subject of corporate income tax assessment and payment.

In case a **non-resident company** performs **construction activity** in Hungary, it will have to pay corporate income tax and file tax return first time for that year when its activity period exceeds the time limit stated in the relevant double tax treaty to qualify as a permanent establishment (usually 6 months). In lack of such treaty, the period shall be 3 months.

From 24 November 2017, **development tax allowance** is available under two new legal titles, which have an impact on investments implemented by large enterprises in the Central Hungarian region.

The development tax allowance includes an investment of tangible assets valued at least at 6 billion forints and the commissioning of job creation with the value of at least 3 billion forints in case it meets the requirements of the related governmental decree and it qualifies as a development resulting in product diversification or in a new process innovation.

The tax authority shall deny the **tax donation** for popular team sports, performing artists and film productions in an official resolution if the company fails to pay the tax, tax advance in time. If the payment delay is less than 15 days, the taxpayer is able to submit a special request within 15 days from the receipt of the official resolution. In this case the tax authority shall approve the request and the beneficiary is able to receive the donated amount.

The tax allowance related to the support of the **Olympics tender** has been abolished due to the close down of the tender.

The regulation of depreciation and minimum tax has been refined from 1 January 2018 for those taxpayers who prepare their annual report in accordance with **IFRS**.

A new decree shall regulate the obligation of **transfer pricing documentation**, which has to be applied for tax year 2018. The companies already have the option to prepare the transfer pricing records for tax year 2017 pursuant to this new transfer pricing decree.

According to the changes it shall be compulsory to prepare a so-called "master document" for the whole company-group, and a so-called 'local document' for the particular group member. However, in line with OECD's recommendation additional restricting amendments related to transfer pricing have also been introduced.

Local taxes

From next year there are significant reductions in local business tax for sport related companies. The income related to sport activities (such as revenue from admission tickets, player sales, advertising publishing, sponsoring contracts) of the sport related companies does not constitute the base of the local tax.

From 2018 advertising media (**billboards**) determined in the Act of the Protection of Municipality Image falls under the regulations of building tax. The taxpayer is the person who owns the advertising media on 1 January. The amount of the tax is maximum HUF 12,000 per square metre. It is the decision of local authorities whether they introduce the tax levied on advertising media, which has to be regulated in a separate decree.

In accordance with the modification of summer 2017 companies (newly established and existing ones too) will be able to fulfil their registration obligations towards the local authorities through a one stop shop system. This means that the tax authority will forward the data received from the court of registry to the relevant local authorities.

As a guarantee rule to protect taxpayers is that in case the tax rate is fixed for a certain period, the local authority is not allowed to increase the rate in the first 2 year of the fixed period. If the tax rate, the tax-exemption, the tax allowance is fixed for a certain period the local authority has obligation to disclose data to the State Treasury.

Other taxes

Contrary to the previous HUF 125 million annual revenue threshold, from 2018 **professional athletes, sports coaches** are able to pay taxes in accordance with Act on simplified contribution for public revenues up to a new limit of **HUF 250 million** (or it's proportional amount).

With retrospective effect to 1 September 2017, the payer is not obliged to pay simplified contribution for revenues paid for professional athletes. Simplified contribution paid after 1 September for such revenues can be corrected or refunded by self-revision.

The rate of simplified contribution for public revenues – in line with the decrease of social contribution tax and healthcare contribution – will decrease to 19.5%.

However, the private entrepreneur is not allowed to pay taxes as simplified contribution for public revenues in the tax year when he had chosen to itemized tax of small businesses.

From 2018 law firms are eligible to pay tax in accordance with the rules on Act on Small Entrepreneurs' Tax. From 1 December 2017. the law firm shall be able to file a declaration opting for such tax payment method.

From 2018 the rate of the small business tax shall decrease from current 14% to 13%.

II RULES ON TAX PROCEDURES

The legal **background of tax administration will change** significantly from 2018 however most of the changes will not have an impact on the companies' and individuals' daily routine, rights or obligations related to taxation.

We intend to highlight those modifications in our present newsletter which will we believe should have a relevance on taxation matters.

On 1 January 2018 the new **Act on the Rules of Taxation (Art.)** and the **Act on the Rules of Tax Administration (Air.)**, and the **Rules on Tax Enforcement (Avt.)** will enter into force. Air. will determine the general rules of tax procedures, Art shall specify the taxpayer's rights and obligations.

The provisions of new Art. and Air are applicable for procedures started or repeated after **1 January 2018**. The new rules are also applicable for obligations arising after 1 January 2018.

Due to the fact that the tax execution rules have been excluded from Art., the Parliament has adopted new Rules on tax execution (distrain). The most significant modification of the new tax execution rules is that the **National Tax and Customs Administration shall be the general enforcement authority** from 1 January 2018. According to this provision the tax authority will be eligible to collect the taxes and custom duties, public dues collectible as taxes and other public dues (e.g. public administration fines, administrative fees, chamber contribution).

In the future new government and national economic ministerial decrees shall enter into force in order to implement further measures related to taxation and tax enforcement.

Tax audit

Instead of the former regulations in previous Art., Air. defines **two types of tax audit: tax audit and compliance review**.

Tax audit triggers an audited period, compliance review is for a review of certain tax liabilities but does not result in an audited period.

Tax audit meets the requirements of subsequent audit of tax returns determined in the previous Art. In this case the tax authority audits the taxpayer's tax assessment per tax types and per tax periods.

Compliance review meets the requirements of audit of certain tax obligations, audits for gathering data and investigating the authenticity of economic events. In this case the tax authority audits whether taxpayer has fulfilled its administrative taxation liabilities.

The Act on Stamp Duties will specify further audit provisions related to stamp duty reviews.

An **intention for self-revision** can be announced by defining the taxation period and the type of tax. The **tax authority is not allowed to initiate an audit** of the announced tax type and taxation period **for 15 days** from the announcement.

Time limit

The duration of tax audit may not exceed **365 days**. If the **taxpayer is not obliged to be registered in the commercial register and for reliable taxpayers** – assuming the taxpayer does not obstruct the tax audit – the tax audits may not exceed **180 days**. For taxpayers in a group taxation arrange-

ment and taxpayers with VAT registration the maximum duration of tax audit is always 365 days.

Remedies

1. Written comments for the tax authority's minutes

Taxpayer is entitled to make written comments for the tax authority's minutes within **15 days**, in case of tax audit 30 days of receiving the minutes. It is a relevant amendment that the above **deadlines are non-excusable**.

2. Appeal

In future appeal procedures it is **not possible** – except reason of void – to **allege any new fact or evidence** which taxpayer had already known when the resolution was made by the tax authority, but **taxpayer did not disclose** that evidence **at the request of the tax authority**.

In case the **appeal is not obvious** or is **controversial** the first instance tax authority shall call taxpayer to submit the appeal with obvious content within 8 days.

The appeal shall be **deemed unobvious** if taxpayer does not give a definite reason underlined with facts in the appeal why he disputes the first instance resolution or if it cannot be decided whether the appellant requests the amendment or the annulment of the resolution.

3. Supervisory measure

Contrary to the previous regulations the application for supervisory measure **will be limited to only one occasion within one year** after the resolution becomes final. In case the claim is submitted after the one-year time limit, the tax authority shall reject the initiation of any supervisory measures.

Sanctions

Tax penalty

Contrary to the draft changes there will be no change in the rate of tax penalty: the tax penalty **will remain 50% of the tax arrears**, and 200% of the tax arrears if the tax arrears are related to hiding income, falsifying books and registers.

As a new provision, **conditional tax penalty** is introduced, which **exempts taxpayer from paying half of the tax penalty** if the taxpayer **renounces the right to appeal** against the tax authority's resolution in writing and taxpayer also **pays the tax arrears** determined in the resolution by the due date.

Late payment interest

In contrast with earlier press releases there will be **no change in the rate of late payment interest**: it shall remain equal to a 1/365th part of the amount calculated at a double rate of the central bank's prime rate for each calendar day.

As an amendment, the tax authority shall **not assess** default interest if it is **less than HUF 5,000**.

Default penalty

A default penalty of **maximum HUF 1,000,000** may be imposed on those **pursuing economic activity without having a tax number**. In comparison with the previous amounts of HUF 500,000 and HUF 200,000 in case of individuals this appears to be a significant increase.

Default penalty can be imposed for one year after the violation of rules has come to the tax authority's knowledge. After 1 year the default penalty – except the violation of rules was revealed at a tax audit – shall not be imposed by the tax authority.

The circumstances to impose a default penalty have become more transparent and constricted.

Exemption from sanctions

As a new rule no sanctions shall be applied against a taxpayer if he/she proceeds **in compliance with the information published on the specific section of the tax authority's website**. In this case taxpayer is only obliged to pay the tax arrears and does not have to pay tax penalty or default interest.

Deletion of tax number, suspension of tax number

It shall be a reason to delete the taxpayer's tax number if the taxpayer fails to perform its obligation to file a VAT summary statement or monthly return on tax and contributions within 35 days from the return's due date, despite being called upon by the tax authority.

According to the new procedural rules the **suspension of tax number shall cease**.

Services provided by the tax authority

The tax authority shall **publish on its website the names and tax numbers of reliable tax payers as well as the list of taxpayers who do not owe public debt.**

The tax authority may **notify involved parties** if during its tax audit such **facts, connections**, circumstances come to the attention of the tax authority **which may assume tax evasion**. Such notification from the tax authority may encourage the law-abiding taxpayers to terminate the business relationship with suspicious taxpayers who are involved in tax avoidance.

The tax authority may call upon taxpayer for self-audit or may initiate contact in a **supporting procedure** in order to correct the errors, deficiencies revealed at the authority's risk analysis. The participation is voluntary in the supporting procedure. With the exception of self-revision fees no legal consequences shall be applied after the deficiencies which have been settled in the supporting procedure.

Mentoring shall be a new possibility, where the tax authority provides assistance and offers consultancy for start-up companies for 6 months **if the start-up company requires** the tax authority's assistance.

Execution process

In case of **distraints** from wages the **employer is required to notify the tax authority** about the amount of the income available for the monthly distraint and also other circumstances which may have an effect on distraints. This provision can add administrative burdens for companies. We do not have further information at the moment about the method of data provision.

It is a relevant change that immovable property can be subject to collection process also if the debt is below HUF 500,000.

The purpose of our newsletter is to provide general information and to draw the attention to the current changes in law which we believe to be important for the business operation of our clients. It is not a replacement for careful review of the acts and rules and the consultation with your tax advisor.

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