

Tax Changes – 2009

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On 1 December 2008 Parliament accepted the 2009 tax law amendments regarding various tax categories. In this tax newsletter we would like to draw attention to next year's amendments.

Corporate income tax and surtax for corporate enterprises

Conditions of the application of 10% reduced tax rate

The conditions of the application of 10% reduced tax rate are changed, and these also apply to the 2008 tax liabilities. The changes are the following:

- It is specified how and for which periods the labour authority requirements should be met.
- The level of wage contributions required are more favourable for taxpayers located in the most disadvantaged areas.
- A taxpayer resulting from a transformation does not have to meet the requirement that the tax liability of the previous year has to at least equal the minimum profit tax.

Income from controlled foreign companies

When determining corporate income tax and surtax liability for the tax year 2008 and 2009, in case of corporate income tax, 75% of the dividend and shares received from controlled foreign companies, and of the income accounted for during termination without legal successor or capital withdrawal, and in the case of surtax, 75% of the dividend and shares received from controlled foreign companies may decrease the profit before taxation.

Among others, conditions restricting the application of decreasing items under this heading are:

- the income serving as the base for dividend payment has been accounted for as income by the controlled foreign company by 30 June 2008;
- Fifty per cent of the income accounted for is invested by the taxpayer in state securities by 30 June 2009, and held there for two years.

If the taxpayers fulfil these conditions, they cannot be penalised subsequently by any act on taxes or stamp duties; furthermore, criminal responsibility cannot be established either related to generation of and influence over income, taxes and stamp duties, accounting and related documentary requirements.

This exemption expressly applies to those persons, who did not declare income due to the generation of income by controlled foreign companies.

The rule should not be applied for the income of controlled foreign companies in Andorra, Monaco and Lichtenstein, or for income acquired through crimes against the Criminal Code of Hungary.

Value added tax

The modifications of the act on VAT will come into effect from 1 February 2009.

Deadline for invoice issuance

The invoicing deadline is to be slightly amended. Under the new requirement, the taxpayer is to issue its invoice at the latest within a reasonable period after the date of supply, or after the tax point for advance payments.

Fifteen days is deemed to be reasonable, if the invoice includes VAT. In case of cash payments, the invoice should be issued without delay.

Tax payment obligation for mistaken invoicing

A new precondition is prescribed by the new rule for cases when an invoice is issued without performing any supply of goods or services. In future, the issuer would have to arrange the cancellation of the invoice and inform the customer at the same time in order to avoid tax payment liability for the mistakenly issued invoice.

Obligatory invoice issue

Stricter documentation will be required for larger cash-flows requiring the issue of invoices and advance invoices in all cases where the consideration reaches or exceeds HUF 900,000.

Threshold for taxpayers to be entitled to self-assess import VAT

The thresholds of tax exempt supplies that entitle taxpayers to self-assess import VAT will be increased from HUF 10 billion to HUF 12.5 billion and from HUF 20 billion to HUF 25 billion. The threshold will, however, be expanded to include certain transactions related to the international trade of goods.

Special provision regarding the activity of tour operators

The new regulation will make it possible again for tour operators to calculate their VAT base on an amalgamation of similar tour types instead of individual tours. The law still does not, however, clarify the invoicing rules for this special scheme.

Local Taxes

Local business tax

- Local governments which review local business tax will inform the Tax Authority and those municipalities in which the taxpayer has other premises on the result of the review;
- The 90% tax base deduction for the activity of foreign entities is replaced by a 100% exemption where the conditions are met;
- The limit of revenue for using the simplified tax method increases from 4 million to 8 million forints.

Additionally, regulations in connection with certain public services, non-profit organisations, the due date for building tax, and the building tax on reconstruction of heritage buildings will be partly amended.

Definition of mediated services

The definition of mediated services has been extended to include costs for services in relation to the building of new houses on the basis of an entrepreneur's contract. These may be considered as part of the value of subcontractors' work. This makes it possible for the investor to deduct from its net income on the sales of new houses the value of those services, which were not deductible under any other title until now.

Temporary business activity

Local business tax returns on temporary business activity have to be filed by reference to the date of the end of the business activity.

Company Car Tax

From 1 January 2009, company car tax relating to cars partly used for private purposes will be dealt with in the Act on Vehicle Tax, rather than in the Act on Personal Income Tax. The company car tax will have to be paid for all cars (irrespective of whether used for private purposes), which either are not personal property or are personal property where business costs have been accounted on them.

The taxable person for cars registered in Hungary will be the owner of the car in the register of the authority. For cars covered by finance lease, this will be the lessee. For cars with foreign registration the user of the car will be the taxable person.

The monthly tax rate would be HUF 7,000 for cars having an engine capacity up to 1600 cm³ or capacity of rotary-piston engines up to 1200 cm³, and HUF 15,000 for all kinds of cars above these capacities.

To avoid double taxation the Proposal gives the possibility to deduct vehicle tax from this company car tax in each quarter where both tax liabilities arise.

Company car tax must be self-assessed and paid to the Hungarian Tax Authority quarterly, by the 20th of every month following the quarter.

Personal Income Tax

Tax Allowances

According to the proposed changes, tax allowances may be deducted up to an annual income limit of HUF 3.4 million and up to an income tax amount of HUF 100,000, which is 30 % of the so-called consolidated allowance basis. To the current tax allowances would be added a household tax allowance. According to the new regulation certain household services, based on invoices, may be taken into account as an allowance.

Income from controlled foreign companies

Ten per cent is levied on the income of a private person from low tax jurisdictions, (interest, dividend, shares arising from alienation) during the establishment of obligations of personal income tax for 2008 and 2009.

Among others, conditions restricting the application of decreasing items under this heading are:

- the income serving as the base for dividend payment has been accounted for as income by the controlled foreign company by 30 June 2008;
- Fifty per cent of the income accounted for is invested by the taxpayer in state securities by 30 June, 2009, and held there for two years.

If the taxpayers fulfil these conditions, they cannot be penalised subsequently by any act on taxes or stamp duties; furthermore, criminal responsibility cannot be established either related to generation of and influence over income, taxes and stamp duties, accounting and related documentary requirements.

The rule should not be applied for the income of controlled foreign companies in Andorra, Monaco and Lichtenstein or for income acquired through crimes against the Criminal Code of Hungary.

This exemption expressly extends to persons, who did not declare income due to the generation of income by controlled foreign companies.

Fringe benefits

According to the changes, the currently applicable income limit of HUF 400,000 will be terminated in case of taxable non-wage employer-provided benefits.

Income from interest/Capital gain

Where the taxpayer did not take into account the acquisition value or the related costs when determining income from interest/capital gain, they will be able to amend it in their tax return.

Approved employee securities benefit programme

The value of shares which may be granted by the employer in a non-taxable way will be increased from HUF 500,000 to HUF 1 million.

Changes in the private individuals' solidarity surcharg

According to the proposed changes, a private individual will not be obliged to pay solidarity tax advances where the payer company has not deducted this already. He/she would be liable to pay this solidarity surcharge only by the due date of the annual income tax return.

In a further change the payer company will be obliged to deduct the solidarity tax advance also where the private individual declares that he/she has already paid the pension contribution up to the annual limit.

Dividend

The tax payable on dividend income will be uniformly 25%. Therefore, the 35 % tax rate will be terminated.

Tax free benefits in kind

As of 2009, the usage of cars for private purposes provided by a payer, legal entity with foreign residence or other organisation, and furthermore the provision of a single ticket in relation to motorway-usage, will be tax free benefits-in-kind, according to the Act on PIT.

Base of Contributions

In order to reduce administration costs, the base of the Employer's contribution (3%) and the Vocational contribution (1.5%) will be equal to the base of social security contributions, while the base of the Employee's contribution (1.5%) will be equal to the base of Health security contribution.

The Act on Social Security Contributions

Where entrepreneurs performing supplementary activities are involved in more enterprises, Health Care Contribution must be paid only once, but the monthly charge rises from HUF 4,350 to HUF 4,500 (HUF 150 per day).

Changes in the Act on the Rules of Taxation

Tax penalty

According to the new law amendment, tax penalty may be 75% of the tax shortfall, where this arises due to concealed revenues, manipulated or destroyed records.

Default penalty

If an employee, a representative or the private individual do not fulfil voucher and invoicing obligations, their direct superior can be subject to a default penalty of up to HUF 500,000. In the case of illegal employment, the employee and their direct superior whose obligation it is to create and submit a report regarding employees, can be subject to a default penalty of up to HUF 500,000 per non reported person.

A buyer failing to fulfil the invoice keeping requirements can be charged a default penalty up to 20% of its market value. A tax payer trading goods not backed by invoices can be charged a default penalty up to 40% of their market value.

A tax payer who is obliged to open a bank account can be charged a default penalty of 20% for transactions exceeding HUF 250,000 paid by banknotes and coins.

Suspension of tax numbers

The tax authority will suspend a tax number where:

- the tax payer is ordered to close its premises for 60 days, or is ordered repeatedly to suspend its activities for 60 days;
- the tax payer does not fulfil its tax return and taxpaying obligation within 365 days of their falling due.

Tax return made by the employer and the simplified tax return

Employees must declare not later than 31 of January – if eligible – whether or not they would like to ask the employer to prepare their tax returns.

If eligible, employees may request the tax authority until 15 February to complete their simplified tax returns.

Payments related to the performance of public procurement

According to the amendment, the limit of payments based on an agreement concluded between subcontractors and a winning bidder related to the performance of public procurements will increase from HUF 100,000 to HUF 200,000. This payment can take place based on the presentation of the common zero tax certificate issued no more than 30 days before the payment (based on the earlier law in effect it was 15 days). However, the above mentioned tax certificate may be replaced by registration on the database of public due free taxpayers.

Further main changes

The electronic form declaring that the individual has no tax obligations will be regarded as a tax return equivalent.

Tax authority records will be regarded as delivered when they cannot be delivered due to a missing post-box.

According to the tax amendments, the day on which a delegated non-resident individual's assignment ends has to be reported to the tax authority.

The laws of judicial enforcement are partially changed.

Excise duty

Relief for clients

Bank guarantees issued by credit institutions established in other EU Member States will also be acceptable as financial collateral.

In the case of legal succession, the proposal makes it possible for all types of licensees to maintain the excise license with appropriate alteration, which could simplify and shorten the current authorisation procedure.

Biofuels

According to the new law, the provisions on biofuels will change slightly. The requirements for applying the preferential duty rate of fuels will alter, and in the future the requirement to produce in a tax warehouse will also be relevant for pure vegetable oils.

Administrative changes

There will be an expanded possibility for electronic administration and broadened obligation for electronic data supplying and reporting. Paper based or parallel reporting possibilities will be terminated (e.g. tax warehouse keepers could only supply data electronically from their customer's record to the customs authority, and fiscal stamps could only be claimed electronically).

Alcohol products

In conformity with EU related changes, the tax exemption for alcoholic therapeutic products which does not belong to classified medicines will be extended until 31 March 2011.

Tobacco products

In 2009, tax levied on cigarettes and other tobacco products will increase in two steps:

- For cigarettes, HUF 8,265/1,000 pieces and 28.3% of the retail price, but at least HUF 15,175/1000 pieces as of 1 January 2009, and HUF 15,475/1,000 pieces as of 1 July, 2009;
- For fine cut tobacco, 52% of the retail price but at least HUF 6,070/kg as of 1 January, 2009, and HUF 6,500/kg as of 1 July 2009;
- For other tobacco for consumption purposes, 32.5% of the retail price but at least HUF 6,070/kg as of 1 January 2009, and HUF 6,500/kg as of 1 July 2009.

Stamp duties

Purchase of receivables free of charge

The new amendment refines the definition of market value of non-cash receivables.

According to this the provisions of the act must be applied in case of the release of receivables, assignment, assumption of debt and other similar acquisitions if the acquirer is a domestic resident individual (as defined in the Act on Personal Income Tax) or organisation.

Contingent exemption for the purchase of plots free-of-charge

Provisions on the exemption of the purchase of plots – which are suitable for buildings – free of charge by organisations, are also refined.

The provision, according to which plots purchased free-of-charge are exempt from stamp duty, will not be changed, if the acquirer undertakes to build a dwelling on them within four years. Refinement of the law concerns those cases where the acquirer organisation is being transformed before expiry of this term. According to the amendment, the successor of the real estate must fulfil the obligations undertaken by the predecessor within the term prescribed for the latter.

Stamp duty for real estate with conspicuous disproportion of purchase value

According to the proposal concerning real estate purchased for token payments or free of charge, the market values defined by common law must be taken into consideration and gift duty must be paid on the difference between the purchase price and 50% of the market price. The remaining value for such transactions will attract stamp duty at the rates applicable for onerous transfers.

Stamp duty liability of real estate acquisitions for trading purposes

The Proposal would simplify the documentation obligations on real estate acquisitions for trading purposes – which are subject to the preferential stamp duty rate (2%) – and would unify the conditions for companies carrying out the trading and leasing of real estate.

Inheritance duty

According to the amendment of the so-called “health tax” every portion of legacy inherited by a child, the spouse or the parent of the testator, and by the grandchild – having lived in the same house, without parents – will be exempt from inheritance tax up to HUF 20 million. If the inheritance includes real estate for dwelling purposes or a property right related to apartments, the tax base will be reduced by the above amount.

If this value is less than HUF 20 million, other properties subject to inheritance duty may be exempted from the duty up to the remaining amount. As a new rule, the acquisition of debt securities issued by any EEA member states (including Hungary) is also exempt from inheritance duty.

Accounting

The amendment refines the definition of related parties according to the Commission Decree 1725/2003.

According to the proposal, companies which keep their records and prepare their financial reports in a foreign currency other than EUR could change their currency to EUR if they wish. They also have to amend their memorandum of association accordingly.

The monthly average sum for daily closing cash is to be limited. The allowable amount will be restricted to 1.2% of the total income of the previous business year (12 months), but not less than HUF 500,000.

In addition to unlimited business entities, private limited liability companies not obliged to have an audit can also opt for preparation of their annual report in a special way (according to 98/A § of the Act on Accounting). They can not deviate from this option before the conditions exist. This amendment may decrease the cost of preparing an accounting report for numerous small entrepreneurs to a significant extent.

Registration tax

Registration tax will be reclaimable also where claimed not by the person who actually paid the tax, but by the person purchasing the motor vehicle on which registration tax was levied, who then sells or delivers it abroad without putting it into circulation in Hungary.

Energy tax

As of 2009, coal will also be brought within the Act on Energy tax. The basis of tax will be the quantity, measured in thousand kilograms, the tax rate being HUF 2,040 per thousand kilograms.

Non-profit business entitie

The law changes try to remedy several loopholes and taxation problems concerning public benefit corporations. The amendments intend to terminate disadvantageous provisions on the one hand, and to hinder possible corporate tax evasion on the other hand.

The 'Robin Hood' tax

According to the law, taxable persons are business entities engaged in energy supplying activity and those foreign entrepreneurs who are carrying out this business activity through a permanent establishment in Hungary. The liability to pay tax arises irrespective of the corporate form of the foreign entrepreneur. The tax base should be determined by reference to the activity performed through the permanent establishment.

Entities carrying out the following activities qualify as energy suppliers, and are thus subject to tax: mining entrepreneurs extracting carbon-hydrogen, authorised producers and wholesalers of petroleum products, authorised natural gas and electricity traders and authorised electricity producers with a power plant capacity of over 50 MW.

The basis of the new tax is basically identical to that of the surtax for corporate entities, so it corresponds to the profit before tax determined under the Act on Accounting amended by some items arising from free of charge transactions, international treaties and directives.

The tax rate is 8% of the positive tax base, to be assessed, declared and paid simultaneously with the corporate income tax. Ninety per cent of the expected tax has to be declared and paid by the 20th of the last month of the tax year. This obligation does not apply to those taxpayers whose revenues did not exceed HUF 50 million in their preceding tax year.

The tax is to be regarded as a direct tax in the context of international treaties and during the calculation of foreign tax credit and foreign tax base exemption. Therefore, the principles used during the calculation of corporate income tax and solidarity tax have to be applied.

Environmental product charge

The most important changes are related to the rules of commercial packaging effective from 1 January 2009, as follows:

- Taxpayers are currently facing interpretation problems related to the definition of commercial packaging. The amendment aims to solve this problem by redefining the definition of commercial packaging, i.e. it lists the products, whose packaging qualifies as commercial packaging, according to the Customs Codes.
- The extent of product charge 'H' effective at present will increase by 10%, except for plastic bags, and the former product charge 'Ú' and 'K' will be replaced by a uniform product charge 'E', the extent of which will be HUF 1.80/piece in case of the first inland seller effective as of 2009 (the so-called product charge "E1") and HUF 3.5/piece in case of the first customer reselling the products (hereinafter referred to as the "first reseller customer" – this is the so-called product charge "E2"), not depending on the material and cubic content of the commercial packaging. (Product charges will increase to HUF 2 and 4/piece effective as of 2010.)

- For the purpose of promoting the use of reusable (refillable) packaging, the law allows deduction of 100% of the product charges 'E1' and 'E2' in case of commercial packaging for which it can be certified that the packaging has been taken back and reused in a system established for this purpose (for instance in a so called "deposit system"); or for a first reseller customer if the product taken back as described above has been handed over to the producer.
- The rules will be simplified in case of non-reusable packaging (single-use packaging) as well. Based on the law it is allowed to deduct 85% of the product charges 'E1' and 'E2' paid for non-reusable commercial packaging if the recycling of waste produced in this way can be certified.
- According to the accepted amendment, the first inland seller will also be liable to pay the product charge arising at the first reseller customer, if it sells the commercial packaging directly to the consumer, in the frame of a retail transaction.
- If the quantity of commercial packaging sold by the first inland seller and its affiliated parties does not exceed 75,000 pieces per annum, they will be exempted from paying the product charge 'E1'.
- The first reseller customer will be exempted from paying the product charge 'E2', if the quantity of commercial packaging sold by it does not exceed 75,000 pieces, and it possesses a retail establishment with up to 50 m² of floor space.
- The exemption related to the quantity of packaging sold and to the floor space of the retail establishment qualifies as 'de minimis' aid

- New product charges regarding other materials will be added to the product charge 'H' defined in Appendix no. 2 of the Law. This amendment has been entered into the bill pursuant to a proposal of an MP in order to set a separate tax rate for commercial packaging other than that made of plastics, glasses, composite packaging or metals.

Further refinements are also included in the amendment regarding all products liable to environmental product charge, among which the following are the most important:

- According to the amended rules, the liable person would have two alternatives for the date when the product charge payment liability arises, in case of products liable to product charge acquired from the European Community, or in case of packaging produced in Hungary. This would mean that instead of applying currently effective legislation, in case of products and packaging produced in Hungary, the product charge payment liability would arise on the day when the components of the packaging are recorded as inventory, if the liable person announces its choice to apply this option to the Customs Authority by 20 December of the previous year and makes an inventory of the related products at year end. (Having regard to the fact that the law enters into force on 1 January 2009, it is unclear from a legislative point of view whether or not the choice regarding the year 2009 can be announced by 20 December 2008. It is recommended to follow the official publications for the announcement as expected by 20 December.)

- From 1 January 2009, the law will set that the company ordering contract manufacture services is the liable person in case of contract manufacturing regarding chargeable products manufactured in Hungary. Furthermore this liability can be assumed by the contract manufacturer under an agreement.

The law provides for definition of contract manufacturing as well. Based on this it will cover the manufacture of chargeable products for payment where raw materials or semi-finished products are transferred free of charge to a person established in Hungary (contract manufacturer).

- As of 2009, the first domestic buyer will be allowed to assume the product charge liability by means of an approved agreement even if at least 60% of the purchased chargeable products will be exported or sold within the territory of the EU.
- The tax return filing obligation relating to chargeable products on a quarterly basis will be ceased for those taxpayers who submit their tax returns on an annual basis according to the general principles of the Act on Rules of Taxation. They can submit their tax returns on an annual basis by 15 February of the following year effective as of 2009. All liable persons have to submit a tax return annually in case of reusable packaging.
- If products under transit procedure are re-packaged, the former packaging (which remains in Hungary) will trigger environment product charge liability from 2009.

- Furthermore, the definitions described by the law will be harmonised with customs regulations. Accordingly, product charge would not be payable in case of admission into a customs warehouse, customs free zone or customs free warehouse. In case of packaging, the product charge would not be payable provided that the product will not be re-packaged.

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