

TaxAlert

August 2010

On 22 July 2010, the Parliament accepted amendment of some tax rules. In this tax alert, we summarize the most relevant amendments.

Corporate income tax

Application of the favorable tax rate of 10 percent is to be extended up to a tax base of HUF 500 million, instead of HUF 50 million. In the future, the application of the favorable tax rate is not to be restricted by any specific requirements (which currently are the following: limitation of tax allowances, minimum number of employees, paying at least the minimum corporate income tax, complete fulfillment of labor administration, not having any trial at the labor courts, paying at least the minimum social security contributions, the amount of corporate income tax saved by applying the favorable tax rate is reclassified to fixed reserve in the balance sheet).

As extension of the 10 percent tax rate to a tax base of HUF 500 million applies from 1 July 2010, there are different rules effective for the first and second half of 2010. To benefit from the new rules, taxpayers should split their corporate income tax base for 2010.

For the period between 1 January and 30 June 2010, the taxpayers may apply

- The 10 percent tax rate up to a tax base of HUF 50 million, if they meet the requirements listed in the law. The numerical requirements would be prorated because they would be applied for only half a year;
- The general tax rate of 19 percent, if they cannot meet the requirements listed in the law.

For the period between 1 July and 31 December 2010, the taxpayers may apply

- The 10 percent tax rate up to a tax base of HUF 250 million (half the annual HUF 500 million limit);
- The tax rate of 19 percent above HUF 250 million.

With relation to the calculation of de minimis reliefs, temporary rules are also introduced. These would also determine the calculation on the basis of dividing the tax year into two six month periods.

Taxpayers having a different tax year than the calendar year, would determine their tax base in line with the rules effective on the first day of their tax year (according to the act on the Rules of Taxation). Those taxpayers, with a business year end starting before the effective date of the new rules, should determine their corporate income tax base according to the rules which were effective in the first half of 2010. Conversely, those taxpayers with a business year starting after the effective date of the new rules should determine their corporate income tax base according to the rules effective in the second half of 2010.

Taxpayers in liquidation are not entitled to divide their tax base.

In case of both controlled foreign companies and companies owning real estate, the 19 percent tax rate must be applied for determining corporate income tax in 2010.

Corporate income tax advance payments are not to be modified because of the change in the tax rate.

Tax on financial institutions

Tax will be levied on financial institutions in relation to their financial statements concerning the financial year closed prior to July 1, 2010.

The tax is payable in two instalments, the first by September 30, 2010 and the second by December 10, 2010. The tax should be deducted from the pre-tax profit of the financial institutions in 2010.

The tax base and rate will be determined differently, depending on the type of financial institution:

- **Credit institutions:** the tax base is the modified balance-sheet total from the financial statements of 2009, prepared in compliance with the government decree on the special provisions regarding the annual recording and bookkeeping obligations of credit institutions and financial enterprises ('government decree'). The modified balance-sheet total is the balance-sheet total for 2009, decreased by the value of domestic interbank loans, the value of securities and shares issued by other domestic credit institutions, financial enterprises or investment companies, by the value of assets from loans granted to domestic financial enterprises and investment companies and from subordinated and additional loan capital (including the value of reverse placement transactions, repurchase agreements and delivery repurchase agreements concluded with such institutions). The tax rate is 0,15% up to a balance sheet total of 50 Billion HUF and 0,5% for the part exceeding that amount.
- **Insurance companies:** the tax base is the modified premiums calculated from the 2009 financial statements, prepared in compliance with the government decree on the special provisions regarding the annual recording and bookkeeping obligations of insurance companies. The modified premiums are the sum of non-life insurance premiums without reinsurance and gross life insurance premium less 90 per cent of single premium insurance and 90 per cent of irregular premiums earned. (Furthermore, less the premiums earned on deferred-starting supplementary pensions certified by the Supervision authority, according to the act on voluntary mutual insurance funds.) In case of insurance companies the tax rate is 6,2%.

- **Financial enterprises:** the tax base is the profits from interest, charges and commissions calculated from the 2009 financial statements prepared in compliance with the government decree. The tax rate is 6,5%.
(The act, however, is ambiguous regarding the interpretation of which profit categories are covered by profit from interest and that from charges and commissions; whether, for example, the interest margin or interest revenues qualify as profit. The same question arises in case of charges and commissions.)
- **Investment companies:** the tax base is the amended net sales revenue (from the 2009 financial statements prepared in compliance with the government decree). Amended net sales revenue is that from investment services decreased by the cost of investment services. The tax rate for investment companies is 5,6%.
- **Stock exchange trading companies:** the tax base is the amended net sales revenue from the 2009 financial statements (stock exchange revenues increased by other revenues) prepared in compliance with the government decree on the special provisions regarding the annual recording and bookkeeping obligations of enterprises providing stock exchange and clearing services. The tax rate is 5,6%.
- **Commodity exchange companies, venture capital funds:** the amended net sales revenue for 2009 constitutes the basis of the tax. Amended net sales revenue is the net sales revenue, except that for commodity exchange companies that do not exclusively provide commodity exchange services, the net revenues arising only from these activities will be considered as the tax base. (In this case, the act on corporate income tax and dividends provides the definition of net sales revenue.) The tax rate is 5,6% for these institutions.
- **Investment fund management companies:** the tax rate is 0,028%, and it is levied on the total amount of the net asset value (the value of assets in the portfolio of the investment fund, including assets from lending, decreased by total liabilities and accrued expenses and deferred income) of managed funds, furthermore the total value of other managed portfolio funds (e. g. pension funds, health funds, wealth management funds) determined on December 31, 2009.

According to the act, another 200 Billion HUF of tax is to be imposed on such institutions in 2011. The detailed conditions (also in relation to 2012) will be drafted later.

Personal income tax

Employment not covered by the tax regime

According to the tax amendments accepted by the Parliament on July 22, 2010, the definition of 'household work' and special rules on the taxation of income derived from such activities will be introduced.

Cleaning of houses, nursing care and home help, housekeeping, gardening, repair, maintenance and renovation work carried out by one individual for another should be considered as household work.

The individual 'employer' is not obliged to pay any tax or social security contributions on the employment of domestic help, but must announce the

employment to the Hungarian Tax Authority and pay HUF 1,000 registration fee per employee each month. The registration fee does not provide entitlement to health services or pension.

Before the work starts, the individual "employer" must report their own and the "employee's" tax identification numbers, the social security identification number of the "employee", and the starting date of the employment.

Activities, carried out by sole proprietors or partnerships are not considered as household work. Furthermore, work must not be related to the business activity of the individual employer and their family and the individual employer must not receive such services from any other persons.

Surtax on payments given to employees on cessation of their employment

A 98 percent surtax will be payable on payments to employees with respect to the cessation of their employment, if they receive their salary from the following organizations (however, the definition of employment is not yet clarified with respect to the surtax payable):

- Budgetary authorities,
- Entities established or maintained by statutory, municipal or public foundations' sources or subsidized by operational aid derived from them,
- Council defined in the act on economical state management and budgetary responsibilities,
- Publicly owned business associations, defined in the act on economical operation of publicly owned business associations.

Income given in cash or in-kind in case of the cessation of the employment in excess of HUF 2,000,000 is subject to the surtax (regardless of whether the employee's income for a 60 day period would have been greater than this amount). Payment of holidays not taken, jubilee allowances and salary paid for the exemption period are not included into the above limitation.

The base for the surtax must be defined for each relationship established with the aim of providing work or services. The base of the surtax is independent of whether the income is paid in one or more tax years.

The accepted proposal also provides for tax and contributions with respect to income already paid.

If whole or part of the income, on which surtax is imposed, has been paid before the new provisions enter into force, the payer must correct the personal income tax advance payment and the contributions of the employee and must take them into account as surtax advance payments. Social security contributions of the payer must be considered as health care contribution. Furthermore, relevant tax returns must be amended accordingly and a new tax return indicating the surtax liability must be filed.

The payer is obliged to give a certificate to the employee indicating the modified tax and contributions and the surtax still due. The individual must pay this amount by October 31, 2010.

The individual must indicate the surtax withheld by the payer and the surtax paid by the individual themselves as advance payments.

After the submission of the amended tax returns by the payer, the Hungarian Public Treasury will decrease the amount of funds payable to the Health Care Fund, the Pension Insurance Fund, the Labor-market Fund and the private pension funds by the contributions and membership fees previously paid to these funds but reclassified as advance payments for surtax purposes. Hopefully, the form of the tax return will be modified so that the Hungarian Public Treasury will get adequate information from the Hungarian Tax Authority about the modified amounts per individual.

Local taxes

According to the tax amendments accepted by the Parliament, from the local taxes communal, tax levied on entrepreneurs and tax on certain tourist accommodations are to be cancelled as of 1 January 2011.

Inheritance, gift and transfer taxes

Relatives in the direct line to descent will be exempt from inheritance and gift tax. The spouse is not to be considered as such a relative.

The disposal of shares of a company with real property in Hungary to a related party (defined according to the act on corporate income tax and dividends) will be exempt from transfer tax.

The above exemptions should also be applied to the cases where the Hungarian Tax Authority has been notified, but has not made a final decision by 1 July 2010.

Taxes on water craft, air craft and high-power passenger cars; car tax

Taxes on water craft, air craft and high-power passenger cars will be cancelled by the repealing of act No 78/2009 on the taxation of vehicles of high value.

The cancellation is not retroactive. The second part of the tax liabilities on water and air craft, as well as high-power passenger cars due in 2010 should not be paid. If the taxpayer paid more than half of the annual tax liability reported to the Hungarian Tax Authority, the difference can be reclaimed.

Tax on high-power passenger cars due in the second quarter of 2010 can be deducted from the company car tax due in the same time period. In the future, however, this deductibility would not of course apply.

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