

# Tax & Legal Alert

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## Key amendments to tax laws adopted by Parliament in June 2016



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On 15 June 2016 the Act LXVI of 2016 amending certain tax laws and related legislation and Act CXXII of 2010 on the National Tax and Customs Authority was published in issue no. 87 of Magyar Közlöny (the Official Gazette of Hungary). The most important provisions of the amending act are summarized below. In addition to next year's tax changes, the amending act contains several provisions that will come into effect later this year. We point out these provisions in this newsletter.

## ***Changes related to tax proceedings***

### **Special taxpayer classifications**

According to the amending act, from 1 July 2016, the total tax difference charged to taxpayers classified as "reliable" will have to be reduced by the total tax difference credited to these taxpayers during the current year and the preceding five years. Public limited liability companies can also be classified as reliable if they have been in operation for less than three years. The amendment provides that companies undergoing involuntary deregistration and taxpayers who have amassed unpaid default fines exceeding 70% of their tax payments also be slotted into the "risky" category.

From 1 January 2017, the tax authority will transfer VAT refunds to public limited liability companies within 30 days.

### **Tax audit of binding rulings**

From 1 July 2016, a new type of tax audit will be introduced: binding rulings will be fact-checked to find out whether the events underlying a binding ruling actually occurred, and if so, whether the ruling in question is binding on the tax authority. During the audit, the tax authority may only request documents specifically mentioned in the binding ruling as records that, if issued, kept or retained, prove that the underlying events actually occurred. Regarding binding rulings becoming final and binding before 31 December 2015, the taxpayer may also initiate the proceedings.

Another change during the year is that the expert opinion of the Hungarian Chamber of Auditors must be attached to requests for a binding ruling pertaining to IFRS accounting.

### **Publication obligation under the block exemption regulation**

From 1 July 2016, in accordance with Article 9 of Commission Regulation (EU) No 651/2014 ("block exemption regulation"), the Member States concerned must ensure the publication of relevant information on each individual aid award exceeding the HUF equivalent of EUR 500,000. According to the amendment, for aid in the form of a tax advantage, the required information on individual aid amounts in the specified ranges must be published within one year from the date the tax declaration is due, and must be available for at least 10 years from the date on which the aid was granted.

### **Self-revisions after the limitation period**

According to the amending act, from 1 July 2016, taxpayers will be able to submit self-revisions even after the right of tax assessment has lapsed, in accordance with a court decision, in order to meet their tax obligations. Based on the self-revision, the tax authority may conduct an audit within one year. For periods already closed by an audit, the related tax obligation may be corrected by means of a re-audit at the taxpayer's request.

## ***Changes related to personal income tax, social security contributions, and the social tax***

### **Clarifications and changes to statutory definitions**

Effective from 1 August 2016, the definition of secondment will change: official and business trips (other than commuting to work or travelling to the employer's registered office or place of business) will also qualify as secondment. Other smaller changes and clarifications have also been made in connection with allowances related to pension insurance, and reporting on controlled capital market transactions. The definition of "primary agricultural producer" has also been amended, and the rules on the taxation of income from long-term investments have been clarified. These changes will take effect at different times.

In connection with employer-assisted housing benefits, from 1 January 2017, the amended laws will include definitions for "modernisation", "accessibility", "reasonable housing need" and "family member sharing the same household".

### **Promoting labour mobility**

The amending act contains several changes aimed at promoting labour mobility. From 1 January 2017, the tax-exempt reimbursement that can be provided to employees using their own cars to commute to work will increase to HUF 15/km from the current HUF 9/km. It will also be possible to provide tax-exempt housing assistance for labour mobility purposes under the conditions and to the extent specified by law.

Under the amendment, providing accommodation in any real property owned or rented by the payer (workers' hostel or other employer-assisted housing) will qualify as a tax-exempt benefit even if only one person is housed in a given residential space.





## Sporting events

Effective from 1 August 2016, a statutory definition will also be provided for “sporting event”. Accordingly, tax exemption will only apply to sporting events organised by a sports association or other sports organisation. Other economic operators will no longer have this opportunity as of the above date.

## Tax-exempt benefits

The amending act introduces tax exemption for certain health screenings as well as physiotherapy and mental health treatments provided by employers to all employees or certain employees under an internal policy. The range of health screenings qualifying for tax exemption will be specified in a decree.

In addition, services, catering and – up to a certain limit – gifts provided at cultural, traditional, sporting, leisure and other similar community events organised by local authorities, minority self-governments, associations, foundations, public foundations or ecclesiastical legal entities that are intended for members of the wider public or community, i.e. that are not private, will be regarded as tax exempt benefits.

In addition to nursery services and benefits, kindergarten services and benefits will also be regarded as tax exempt benefits.

## Fringe benefits

From 1 January 2017, the current fringe benefit system will change significantly. Fringe benefits will essentially comprise cash benefits and amounts credited to SZÉP cards. Specifically, only cash benefits provided within the annual threshold and amounts credited to SZÉP card sub-accounts within the statutory limits will qualify as fringe benefits (the annual threshold will be HUF 200,000 thousand per year for public sector workers, and HUF 450,000 per year for non-public sector workers). Any part of the

aggregate amount of benefits qualifying as fringe benefits (i.e. cash benefits and amounts credited to SZÉP cards) exceeding the annual threshold will be regarded as other specific benefits. In the case of full-year employment, cash benefits of up to HUF 100,000 per year will be taxed at a preferential rate, while cash benefits provided to employees in excess of this amount will be taxed as salary (i.e. this portion will not be taxable as other specific benefits).

Under the law coming into force on 1 January 2017, current fringe benefits will be taxed as other specific benefits, i.e. at a higher tax rate.

## Social tax allowances

Effective from 1 August 2016, the amending act reintroduces the “Karrier Híd” Programme: employers of persons whose previous job was in the public sector will once again be eligible for social tax allowance. The tax allowance for employing career starters under 25 and job seekers who have been out of work for a long period will be available even in the event of a change of employer. A new social tax allowance will be introduced for in-house R&D activities, with effect from the day after the promulgation of the relevant amendments.

## Secondments of third-country nationals

Third-country nationals employed by a foreign employer and working in Hungary under a secondment arrangement will be exempt from the social security and social tax payment obligations if the duration of their secondment is less than two years.

Under the amendment, the above rule will also apply to third-country nationals seconded to Hungary who are insured in their home country and whose country of nationality has a bilateral social security agreement with Hungary, as well as to EU nationals who are not covered by the relevant EU social security

regulations and are insured in and seconded to Hungary from a third-country. These rules may already be applied to secondments that commenced on or after 1 January 2016.

If the secondment is extended to more than two years, special rules will apply. In contrast with the current rules, if the extension is due to unforeseen circumstances, and the employee concerned duly informs the tax authority of this, the social security and social tax payment obligations will arise from the end of the second year. This rule may already be applied to secondments that commenced on or after 1 January 2016.

## ***Changes related to value added tax***

### **Extending the scope of the reduced VAT rate**

According to the amendment, the scope of goods and services subject to the reduced VAT rate will be extended. From 1 January 2017, the VAT rate on poultry, eggs and fresh milk (except for breast milk, UHT and ESL milk) will be reduced to 5%, and the 27% VAT rate on internet services will be reduced to 18%.

The catering sector will also benefit from VAT rate cuts: from 1 January 2017, the current 27% tax rate will be reduced to 18%, and once again from 1 January 2018 to 5%, on meals provided and certain non-alcoholic beverages prepared locally in bars and restaurants.

### **Tourism development contribution**

Parallel to the introduction of the 5% VAT rate, providers of catering services subject to the preferential VAT rate will be required to pay a tourism development contribution, effective from 1 January 2018. The contribution base will be the price (excluding VAT) charged for the service, and the rate will be 4%.

The contribution will be determined by self-assessment, and the frequency of reporting will depend on the taxpayer's VAT filing frequency. The contribution will have to be reported and paid for the VAT filing period during which the services shown in the

invoice or other accounting document were supplied, or if no date of supply is indicated, the period in which the invoice or other accounting document was issued. For periods in respect of which the service provider is not required to file VAT returns, the deadline for reporting and paying the contribution will be 25 February of the year following the date of supply as specified in the VAT Act. An amount equalling revenues from the contribution will be earmarked to be spent on tasks related to tourism development.

### **Domestic recapitulative statement**

According to the amendment, domestic recapitulative statements must be filed for all invoices with a VAT content of HUF 100,000, instead of the current threshold of HUF 1 million. Therefore, as of 1 January 2017, the customer's tax number will have to be indicated on all invoices that reach this threshold. It will not be mandatory to show the customer's tax number in invoices issued in 2016 with a settlement date in 2017.

### **Online data supply**

VAT taxpayers will be required to supply data online to the tax authority on invoices that are issued using invoicing software and have a VAT content of at least HUF 100,000. The new provision will take effect on 1 January 2017. In the first half of 2017, taxpayers may voluntarily supply data and will be required to meet this obligation from 1 July 2017. The amendment contains a specific legal provision that will entitle the tax authority to monitor and perform direct data queries from the invoicing software through telecommunications equipment.

### **Domestic reverse charge mechanism**

The bill proposes that, as of 1 January 2017, the reverse charge mechanism apply not only to construction services subject to a construction authority's permit or acknowledgement procedure but also to all construction services subject to a simple reporting obligation. According to the bill, the reverse charge mechanism will also be extended to the sale of chromium and vanadium waste and debris.







## EKAER reporting

Under the amendment, from 1 August 2016, the EKAER reporting obligation will apply not only to deliveries performed using a vehicle subject to toll payment but also to deliveries in which the vehicle itself is not subject to toll payment, but its actual gross weight, including the goods transported, exceeds 3.5 tons. A further change is that carriers will be required to keep the official seal intact until removed by the tax authority. Carriers that fail to meet this obligation will be subject to a default fine of up to HUF 1 million. The tax authority will be entitled to retain the vehicle without a specific decision until the default fine is paid. A further default fine may be imposed if the amount of the goods reported is higher than the amount of goods transported. The default fine may amount up to 40% of the value of goods reported but actually not transported.

## Online connection of vending machines to the National Tax and Customs Authority

From 1 January 2017, vending machines (e.g. beverage vending machines) must be equipped with a surveillance device that facilitates data reporting to the tax authority. The amendment will enable the tax authority to monitor the vending machines through telecommunications equipment and perform direct data queries.

## Changes affecting corporate income tax

### Changes in the principles concerning tax evasion

According to the stricter principles to be introduced as of 1 January 2017, taxpayers will not be eligible for a tax advantage if their transactions are mainly but not exclusively aimed at achieving a tax advantage.

## Changes affecting tax allowances for royalty

Under an interim amendment, as of 1 July 2016 the tax allowance available for royalties received will be reduced based on a redefinition of royalty, which will basically only include income from patents, property rights and software copyright. Besides the narrowed definition, taxpayers will be eligible for a tax allowance based on income from royalties to an extent to which the intangible assets are generated as a result of their own research and development activities. The direct expenses of R&D services ordered from related companies, and the historical cost of intangible assets purchased (received) from related companies may be recognised as direct expenses of own research and development activities up to 30% of the own R&D expenses. Based on a transitional provision, taxpayers will be allowed to apply the pre-amendment rules to intangible assets recorded until 30 June 2016.

## Changes affecting support provided free of charge

According to the amending act, taxpayers that provide support free of charge will be required as of 1 January 2017 to increase their tax base by the amount of that support if the recipient is not liable to pay corporate income tax on this income.

## Preferential transformation and transfer of assets

Under the amending act, with effect from 1 January 2017, companies that perform a preferential transfer of assets and sell their acquired shares following the transfer, during the period for which they have a deferred tax liability, will be required to increase their tax base by the amount they previously used as a tax base decreasing item (not to exceed the amount not yet accounted as deferred tax by the receiving company), while the receiving company may establish its tax base irrespective of the tax deferral. A further change is that taxpayers that perform a preferential transfer of assets or a preferential transformation will be required to justify the transaction from the economic and commercial perspectives.

## Changes affecting related companies

Under the bill, beginning with any tax year starting in 2018, transfer prices between related companies may be used as decreasing items only if the related company declares that it takes into account the difference between the price applied and the arm's length price when calculating the corporate income tax base.

Taxpayers whose receivables from their related companies turn into bad debts will be required to supply data on their related companies and the economic reasons underlying the transaction in their corporate income tax return.

According to the amending act, Hungarian permanent establishments will not be obliged to prepare transfer pricing documentation if they are exempted from paying corporate income tax in Hungary based on an international convention.

## Providing housing assistance for labour mobility purposes, setting up accommodation facilities for workers

According to the amending act, from 1 January 2017 expenses incurred in providing housing assistance for labour mobility purposes and in setting up, maintaining, and operating accommodation facilities for workers will be deductible from the corporate tax base, up to the amount of pre-tax profits, if positive.

## Support for operating workplace nurseries

Under the amending act, from 1 January 2017 expenses relating to operating workplace nurseries will be regarded as tax deductible.

## Tax allowance concerning monuments

According to the amending act, from 1 January 2017 maintenance and renovation expenses relating to monuments and locally protected buildings will be deductible from the corporate tax base (up to 50% of pre-tax profits), at 100% for maintenance and 200% for renovation expenses. Entities funding renovation works will also be able to claim this tax allowance.

## Loss carry-forwards for R&D activities

Effective from the date following promulgation of the amending act, entities with a negative tax base may claim 9.5% of tax base deductions applied on account of R&D activities as a social tax allowance, subject to meeting the following criteria: deriving at least 40% of total revenues from R&D activities, maintaining at least one trainee position, and having no decrease exceeding 10% in the average statistical headcount of R&D personnel in the tax year. If applied, 50% of the above tax base deduction will be regarded as a loss carry-forward already used.

## Extent of the capital expenditure tax base allowance and the allowance on interest paid

According to the amending act, from 1 January 2017 SMEs will be able to deduct from their tax base the full amount of capital expenditures relating to new tangible assets and the renovation of real property, while the amount of the tax allowance on interest paid on capital expenditure loans will further increase.

## Changes concerning local taxes

### Changes concerning the local business tax base

The amending act aims to reduce the gap between the rules on adjustments to the local business tax base (royalty, R&D) and the corporate tax base. As a result, effective from 1 July 2016 the definition of royalty will be made narrower. In addition, from 1 January 2017 only amounts deducted from the corporate tax base may also be deducted from the local business tax base as direct costs of basic research, applied research, and experimental development. As for the definition of royalty, a transitional provision will permit application of the previous rules until the tax year ending on or before 30 June 2021.

### Setting up a single point of contact for filing local tax returns

From 1 January 2017, entities subject to local business tax may file their tax returns with the competent local municipality through the national tax authority. Under the amendment, the national tax authority will forward tax returns to the competent local tax authorities in an electronic format only.

### Stricter rules on building tax and land tax exemption

According to the amendment, from 1 January 2017, to qualify for exemption from local taxes non-profit organisations will be required to make a written declaration on not having had a corporate tax liability in the tax year preceding the year concerned, by the last day of the fifth month of the tax year. In addition, non-profit organisations may only claim tax exemption in regard to buildings, parts of buildings, or plots of land if registered as owners of the same in the Land Register.

### Definition of cultivated land located within municipal boundaries; tax exemption

From 1 January 2017, plots of cultivated land located within municipal boundaries, of a size not exceeding 1 ha and registered as withdrawn from agricultural use, will no longer be exempt from land tax if connection to the drinking water, power, and sewage grids is possible in an adjacent area.

## Changes affecting the special tax on financial organisations

According to the amending act, from 1 January 2017 the special tax on credit institutions and financial enterprises must be calculated on the tax base for the second year preceding the tax year, rather than the tax base for 2009. The amendment provides that for credit institutions the tax rate decreases to 0.15% on that part of the tax base not exceeding HUF 50 billion, and to 0.21% on the part above HUF 50 billion.

## Changes concerning the financial transaction tax

From 1 January 2017, the tax on financial transactions will also be payable by financial institutions that engage in the granting

and negotiation of credit and cash loans, but do not qualify as payment services providers. The tax base will be the amount paid in cash to the financial institution engaging in the granting and negotiation of credit and cash loans; the tax rate will be 0.3%.

## ***Changes concerning advertising tax***

According to the amending act, from 1 January 2017, if a publisher of advertisements fails to comply with its obligation to make a declaration to the advertiser in relation to advertising tax, it will, on request, be required to fulfil that obligation to the national tax authority. Failure to comply with such a request will attract a default fine of HUF 500,000; repeated failure to comply in respect of the same advertiser will be subject to a further default fine of HUF 10 million, and any further instance of non-compliance to a fine equalling triple the amount of the previous fine. Failure to comply with the registration obligation will incur fines according to the same regime. Further, in the case of failure to file a return on advertising taxes, the tax authority will levy a deemed tax of HUF 3 billion, which the taxpayer concerned may challenge by submitting contrary evidence within a statutory deadline of 30 days.

## ***Changes related to the public health product tax***

According to the amending act, effective from 1 January 2017, Act CIII of 2011 on the Public Health Product Tax will be amended as follows:

### ***Changes to definitions***

The amending act clarifies the definitions for “additive” and “herb” in order to make the tax classification of such products easier; exceptions include herbal extracts as specified by Community legislation. New definitions have also been added for “raw dairy materials”, “sweetener” and “herbal beverage”.

The amendment redefines “health promotion scheme” to include activities made available to private individuals for a fee of up to HUF 500 (the current definition only includes health promotion schemes available free of charge).

### ***Changes related to taxable goods***

The amending act extends the definition of “flavoured beer” to include beverages sweetened in whole or in part with sweeteners of a specified quantity. According to the amending act, the sweetener content should be determined on the basis of how much sugar it replaces.

The definition for “alcopops” will also change: just like flavoured beers, alcopops sweetened in whole or in part with sweeteners of a specified quantity will also qualify as taxable. Alcopops containing additives will also be taxable, irrespective of how much soft drink they contain. According to the amendment, alcopops may not contain more than 5% alcohol by volume.

Among alcoholic beverages, fruit spirits and herbal drinks will continue to be tax exempt. However, the requirements for herbal drinks will become more stringent: only those drinks will be tax exempt that contain no additives, are made from at least seven different herbs (excluding flavoured vodka), and contain more than 3 g / 100 ml of herbs (or herbal extracts with an equivalent amount of active substances), and contain at least 0.2 g / 100 ml of each herb of the seven different herbs (or herbal extracts with an equivalent amount of active substances), with the proviso that herb content must be taken into account converted to herb content with 15% moisture content, and that the dominant flavour and scent of the drink should be that of the herbs used.

## ***Changes related to excise duty***

According to the amending act, effective from 1 September 2016, Act CXXVII of 2003 on Excise Duties and Special Regulations on the Distribution of Excise Goods will be amended as follows:

### ***Changes to the duty rates applicable to excise goods***

The amending act provides for adjustment of the excise duty rate of fuel oil, petrol and kerosene to reflect global oil prices. Depending on the price of crude oil on the world market, the duty rate of petrol and kerosene may increase or decrease by HUF 5 per litre, and the duty rate of fuel oil may increase or decrease by HUF 10 per litre.

According to the amendment, the duty rate of a number of tobacco products will also increase:

- For cigarettes, the current excise duty is HUF 15,700 per 1,000 cigarettes plus 25% of the retail selling price, but not less than HUF 28,000 per 1,000 cigarettes. This will increase to HUF 15,700 per 1,000 cigarettes plus 25% of the retail selling price, but not less than HUF 28,400 per 1,000 cigarettes.
- For cigars and cigarillos, the current duty rate is 14% of the retail price, but not less than HUF 4,000 per 1,000 pieces. This will increase to 14% of the retail price, but not less than HUF 4,060 per 1,000 pieces;
- For fine-cut tobacco and other smoking tobaccos, the excise duty will increase to HUF 15,100 per kilogram from the current HUF 14,000 per kilogram.

The reason for the increase is to meet the minimum excise duty requirement applied to manufactured tobacco by the EU. The minimum excise duty will be reached in three stages, the first of which is included in the amendment.

### ***Changes related to tax refunds***

With the changing excise duty rate of fuel oil, the amount of excise duty that can be reclaimed on commercial fuel oil will also change. Depending on the threshold set on the basis of global oil prices, the rate of excise duty that can be reclaimed may be HUF 7 or HUF 17 per litre.

The amount of excise duty that can be reclaimed will also change for fuel oil used in agriculture: depending on the threshold set on the basis of global oil prices, agricultural producers may reclaim 82% or 83.5% of the excise duty levied on the fuel oil they have used.

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