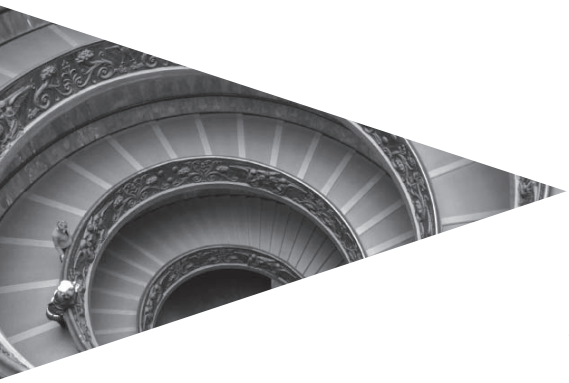
10 November 2008

Ernst & Young
Hungarian Tax News
Special Edition



2009 tax law package withdrawn and resubmitted

Content:

- Corporate income tax
- Personal income tax
- Social Security
- Value Added Tax
- Local Business Tax
- Vehicle Tax / Company Car Tax
- Stamp Duties
- Customs regulations
- Excise Tax
- Tax Procedure
- Accounting
- Green Tax

The past weeks have been rather hectic in terms of the legislation process relating to the 2009 tax law bill. Without doubt the most important event came on 13 October, when the Government – due to the economic processes that have evolved out of the worldwide financial crisis – withdrew the draft tax law amendment bill submitted to Parliament in September.

For a while - based on the press news – it seemed that the Government did not intend to submit any new tax law package before the end of the year. However, a new draft bill on tax law amendments was finally submitted to Parliament on 28 October. The new draft bill is essentially a shortened and revised version of the tax law package which had been withdrawn, although it does not include the earlier proposals on the tax rate changes. Therefore, the new draft bill mainly contains (i) amendments aimed at making the application or the interpretation of tax legislation easier, (ii) amendments made with the aim of decreasing the required level of administration, and (iii) amendments aimed at reducing the scope and size of the black economy.

In our current newsletter we summarize the tax law amendments that are proposed by the Government in the new draft bill.

In addition, the amendments relating to the *Act on Environmental Protection Fees* were submitted to Parliament via a separate bill on 3 October. In our newsletter, we also provide an overview of the expected amendments relating to this law.

ERNST & YOUNG
Quality In Everything We Do

Content:

- Corporate income tax
- Personal income tax
- Social Security
- Value Added Tax
- Local Business Tax
- Vehicle Tax / Company Car Tax
- Stamp Duties
- Customs regulations
- Excise Tax
- Tax Procedure
- Accounting
- Green Tax

Corporate income tax

- The conditions for applying the reduced 10% tax rate would be finetuned.

The amendments relating to the Act on CIT would come into effect as of 1 January 2009; however, the amendments would also be applicable with respect to any tax liabilities incurred in relation to tax year 2008.

Personal Income Tax

- The limits for the different personal income tax allowances would be cancelled. The combined limit for all tax allowances would become 30 percent (with a maximum of HUF 100,000 per year) provided that the income of the individual does not exceed HUF 3.4 million in the tax year.
- As a new tax allowance, it would become possible to reduce the personal income tax by 30% of the invoiced value of household related services (e.g. renovation, cleaning, etc.).
- Tax allowances would be able to be applied in a pre-determined order by private individuals in their tax return.
- The 35% dividend tax would be cancelled; the tax rate payable on the dividend would become a uniform figure of 25% (except for the dividend received from securities offered on the stock markets operating in the EEA countries, which would continues to be subject to 10% dividend tax). The new rule would also be applicable to dividends distributed from profit generated in 2008.
- The combined limit of HUF 400,000 for providing tax-free in-kind benefits by the employer (cafeteria) would be cancelled.
- In connection with the cancellation of the HUF 400,000 combined limit for tax-free in-kind benefits – from 1 February 2009 – limits would be introduced for benefits which can presently be provided without limitation (schooling benefit and cultural institution service). Cost of education (assumed by the employer) not exceeding double the minimum wage would not be regarded as an income of the employee (this new rule would be applicable only to new contracts). Provision of cultural institution services up to the amount of the minimum wage would also become tax-free.
- Company car tax would be repealed in the Act on PIT, as of 1 February 2009.
- From 2009, private individuals would not have to report the income from dividend, capital gains and securities lending/borrowing up to a limit of HUF 100,000, provided that this income derives from a disburser, and that the tax has been withheld by the disburser.
- In the frame of the approved employee securities benefit program, the maximum amount of income that can be realized free of tax would be increased from HUF 500,000 to HUF 1,000,000.
- Based on the effective legislation, only the employer may provide expense reimbursement (paid without verification by receipts and based on assignment order) to its employee. The draft bill would expand this possibility to include reimbursements by other persons (disbursers). Thus, individuals who are not employees, but performing official or business travel in the interests of the disburser (e.g. persons

Content:

- Corporate income tax
- Personal income tax
- Social Security
- Value Added Tax
- Local Business Tax
- Vehicle Tax / Company Car Tax
- Stamp Duties
- Customs regulations
- Excise Tax
- Tax Procedure
- Accounting
- Green Tax

employed by an assignment contract relationship) could also receive such expense reimbursements.

- If a corporate enterprise – upon the distribution of 2008 after-tax profits – were to pay dividends from profit deriving from the waiver of a loan provided by a member of the company, the dividend would be subject to 10% tax (the new provision would come into effect as of the day of the promulgation of the act).

The provisions amending the Act on PIT – with the above mentioned exceptions – would come into effect as of 1 January 2009.

Social Security

- The social security contribution bases would be unified: the base of the 3% unemployment fund contribution payable by the employer would be the social security contribution base (instead of the salary) from 2009. For the employee, from 2009, the 1.5% unemployment fund contribution would be payable on the health contribution base instead of the salary.
- The base of the training fund contribution would be the social security contribution base of the training contribution payer.
- Hungarian residents, who are not insured for Hungarian social security purposes, would be obliged to pay a health service contribution, the monthly amount of which would be HUF 4,500 from 2009, instead of the current HUF 4,350 (the daily amount of the contribution would increase to HUF 150 from HUF 154).
- If the employer does not comply with its reporting obligations or fails to perform the reporting obligation in accordance with the legal provisions, or fails to certify the reporting within the deadline, a penalty of up to HUF 100,000 per person could be levied.
- Hungarian citizens with Social Security ID number (TAJ), citizens of EEA countries or of countries that have concluded a social security agreement with Hungary, who are insured abroad, would be obliged to report that they have concluded an insurance agreement abroad (or in the framework of the social security system of an international organization), as well to report (within 15 days) the termination of any such insurance to the Social Security Authority.
- In 2009, the amount of pension contribution cap per calendar day would be HUF 21,000, instead of the current HUF 19,500 (i.e. the annual contribution cap would be raised from HUF 7,137,000 to HUF 7,665,000 in 2009.)

The new social security rules would be applicable to income earned from 1 January 2009 and to contribution liability arising from the same day.

Content:

- Corporate income tax
- Personal income tax
- Social Security
- Value Added Tax
- Local Business Tax
- Vehicle Tax / Company Car Tax
- Stamp Duties
- Customs regulations
- Excise Tax
- Tax Procedure
- Accounting
- Green Tax

Value Added Tax

- If an invoice was issued without real performance of service or supply of goods, VAT payment may be avoided (in future) only in cases where the issuer of the invoice certifies that the performance failed to occur. The issuer would also need to invalidate the invoice immediately and to notify the addressee of the invoice that this was done. Notification, however, is the only new requirement.
- The system of requirements for the self-assessment of VAT in the case of the importation of goods would be simplified. Accordingly, there would be favorable changes relating to limits set by law for the composition of the total revenues of the taxpayer, and the group of exempt transactions – those which can be taken into account when calculating the limit – would also widen.
- The taxpayer would have to issue an invoice if it receives an advance payment of at least HUF 900,000, even if the buyer is not a taxpayer and does not otherwise request the issue of an invoice.
- The taxpayer would have to issue an invoice within a 'reasonable period of time': however, in practice the current rules would not change (in the case of cash payments, the invoice should be issued immediately, and in other cases within 15 days).

The provisions amending the Act on VAT would enter into force as of 1 February 2009.

Local Business Tax

- Provided that certain conditions are met, the non-profit business associations qualifying as public benefit, or prominently public benefit organizations, would be exempt from local business tax.
- Corporate enterprises would be allowed to reduce their local business tax base by the entire tax base related to their foreign permanent establishments, provided that the conditions set forth in the law are fulfilled (at present only 90% of the tax base may be exempt).
- The municipal authorities auditing the local business tax would have to notify the state tax authority and the other related municipal authorities on their resolutions.

The provisions amending the Act on Local Taxes would enter into force as of 1 January 2009.

Vehicle Tax / Company Car Tax

- In future, the new company car tax would be regulated by the Act on Vehicle Tax as a property type tax. Although the name of the new tax would remain identical to the present company car tax (regulated by the Act on PIT), the subject, the base and the rate of the new tax would differ from the present one.
- The new company car tax would be payable on passenger cars owned by legal entities (irrespective of whether the car is used for private purposes), and on passenger cars whose costs are reimbursed.
- Company car tax liability would not apply to those passenger cars for which (i) business

Content:

- Corporate income tax
- Personal income tax
- Social Security
- Value Added Tax
- Local Business Tax
- Vehicle Tax / Company Car Tax
- Stamp Duties
- Customs regulations
- Excise Tax
- Tax Procedure
- Accounting
- Green Tax

travel expense reimbursement is paid based on assignment order and where (ii) HUF 9 per km is reimbursed in relation to the process of commuting to and from work. Company car tax would no longer be payable with regard to (iii) passenger cars provided within the framework of financial leasing to private individuals, as long as no expense is reimbursed. Moreover, (iv) passenger vehicles exclusively equipped with an electric engine would not be subject to company car tax.

- The taxpayer – as a main rule – would be regarded as the registered owner, and, in the case of passenger cars leased by private individuals, the tax payer would be the lessee. If expenses are reimbursed with respect to passenger cars with foreign license plates, the taxpayer would be legally viewed as the user of the passenger car in question.
- The monthly rate of company car tax for passenger vehicles with an engine not exceeding 1,600 cm3 cylinder capacity or 1,200 cm3 chamber capacity would be HUF 7,000; for all other passenger vehicles, the monthly rate would be HUF 15,000.

The provisions relating to the company car tax would enter into force as of 1 February 2009.

Stamp Duties

- The proposal makes it apparent, that the acquisition/transfer of receivables free of charge and the assumption of debt would fall under the scope of the Act on Stamp Duty and would be subject to gift tax. According to the draft bill, in the event of the acquisition of receivables free of charge, the Act on Stamp Duty must be applied wherever the property acquirer is a Hungarian resident private individual (as defined in the Act on PIT), or an organization registered in Hungary.
- Simplifications and expansion of transfer tax allowances are proposed with respect to real estate trading/leasing, vehicle trading/ leasing (the new rules would come into effect as of the day of the promulgation of the act).
- According to the regulations in effect, if, upon transfer of real estate property, some payment – even if it is only a token payment – is made, the transaction is subject to transfer tax instead of gift tax (the transfer tax rates being lower than the gift tax rates). Based on the proposed bill – provided that the consideration paid does not reach 50% of the market value of the property – gift tax would be payable on the difference between the purchase price and 50% of the market value of the property. For the rest of the market value of the property, transfer tax is payable. (The new rule would relate to transactions concluded after the proposed amendment has entered into force and would come into effect as of the day of the promulgation of the act.)
- The transfer of real estate property in the frame of the preferential transfer of assets is already exempt from transfer tax under certain conditions. The draft bill would render these conditions even stricter. The exemption from stamp duty would be applicable only if the transferor company has at least two lines of business, operated as individual lines of business for two entire 12-month tax years prior to the transfer. An additional condition of exemption from stamp duty would also be that the value of the real estate should not exceed 50% (currently 75%) of the value of the transferred assets (less the cash assets and cash receivables). The new rules would come into effect as of the day of the promulgation of the act

The provisions amending the Act on Stamp Duties – with certain exceptions – would enter into force as of 1 January 2009, but would be applicable only to property acquisitions reported for the purpose of establishment of stamp duty (or would otherwise become known to the state tax authority) after 1 January 2009.

Content:

- Corporate income tax
- Personal income tax
- Social Security
- Value Added Tax
- Local Business Tax
- Vehicle Tax / Company Car Tax
- Stamp Duties
- Customs regulations
- Excise Tax
- Tax Procedure
- Accounting
- Green Tax

Customs regulations

- In future, the taxpayer may be exempted from VAT security in the customs administration procedure provided that he settles his tax obligation (by way of self-assessment) before the legally binding judgment with respect to the application is given (previously, in cases such as this, the taxpayer lost his permission for exemption).
- The five-year statute of limitation period for the right to reclaim any overpayment or erroneous payment of customs duties, non-Community taxes or fees would begin following the verifiable notification of the taxpayer.

The provisions amending the customs regulations would enter into force as of 1 January 2009.

Excise Tax

- Possibilities for electronic administration would be extended to include a significantly greater proportion of the excise tax data reporting obligations.
- The excise securities acceptable to the authority would include any bank guarantee provided by a bank with a registered seat in a European Union member state and in countries which may be considered part of the EEA.

As a main rule, the provisions amending the Act on Excise Taxes and Special Regulations on the Distribution of Excise Goods would enter into force as of 1 January 2009.

Tax Procedure

- In cases where the taxpayer incurs no tax liability in the reporting period, he would be able to file an easy-to-complete declaration, as opposed to the present method of filing a tax return containing zero value. Any such zero declaration could also be corrected by way of self-revision, as long as it is within the statute of limitation period.
- For taxpayers filing tax returns annually, the deadline for filing tax returns would change from 15 February to 25 February following the tax year.
- The deadline for the settlement of the training fund contribution would be the 25th day instead of the 15th day of the second month following the tax year.
- From 1 February 2009, in the event of failure to meet the obligation to issue either proper invoices, simplified invoices or receipts, a default penalty up to HUF 500,000 may be imposed upon the direct superior of the private individual involved in the sale.
- From 1 February 2009, for non-reporting the employment of the employees, a penalty (HUF 500,000 per person) may be imposed on the individual and on his direct superior who is obliged to meet the reporting obligation based on his scope of duties.
- From 1 February 2009, if the taxpayer is obliged to open a bank account (pursuant to the law), he would be obliged to make payments in its business by wire transfer if the amount exceeds HUF 250,000. Failure to comply would result in a default penalty of up to 20% of the amount in excess of the limit.

Content:

- Corporate income tax
- Personal income tax
- Social Security
- Value Added Tax
- Local Business Tax
- Vehicle Tax / Company Car Tax
- Stamp Duties
- Customs regulations
- Excise Tax
- Tax Procedure
- Accounting
- Green Tax

- As of 1 February 2009, the data content of the certificate issued by the employer would also have to include the data on contributions deducted, or payable by the disburser, as well as the data on contributions relating to the previous time periods.
- In order to simplify administration, the Tax Authority would establish a database containing details regarding 'taxpayers free of public debt'; primarily in relation to public procurements. The Tax Authority would register the taxpayer in the database upon request, provided that he meets the conditions for entry. Later, if the taxpayer fails to meet any of the conditions, the Tax Authority would delete the taxpayer from the database. Entry into the database may be requested from 1 January 2009, and the list would be published for the first time by the Tax Authority on 10 February.
- With respect to public procurements, the disburser would have to check whether the subcontractor has any public debts before effecting payment with a minimum of HUF 200,000 in any given month, as opposed to the current HUF 100,000. Also, the combined tax certificate (including no tax liability) presented by the subcontractor cannot be older than 30 days (currently 15 days); alternatively, the subcontractor would have to be listed on the database which records those taxpayers who are free of public debt.
- From 1 February 2009, in cases where a tax shortage pertains to the concealment of revenues or the falsification or destruction of documents, books or records, the rate of tax penalty would be 75% of the tax shortage, instead of the current 50%.
- From 1 February 2009, the taxpayer supplying goods of unverified origin may be imposed with a default penalty equal to 40% of the value of the goods, but with a minimum of HUF 10,000 (in the withdrawn draft bill, the penalty was only 20%).
- As of 1 February 2009, the rules of suspension of tax registration numbers would change.
- In the event of any international mutual agreement procedures, the obligation to retain documents would be lengthened. At the request of the Tax Authority, the taxpayer, the employer (disburser) would be obliged to retain the necessary accounting documents even after the statute of limitation period has elapsed. The new provisions would enter into force as of 1 February 2009.
- Although the deadline for passing a resolution with respect to a binding ruling would not change (60 days), from 1 February 2009 it would be possible to extend the proceedings by sixty days instead of the previous thirty. Furthermore, it would be made apparent in the law that no judicial review may be performed against any resolution containing a binding ruling.
- The taxpayer must also report the date of the termination of work of a foreign resident private individual assigned to his registered seat or establishment at least 30 days before it takes place; the tax payer must also – where this information is available – report any intention to leave the territory of the country on the part of the foreign resident in question. The new rules would come into effect as of 1 February 2009.
- From 1 February 2009, taxpayers would be required to file an interim tax return for the period for which no tax return has yet been submitted on all their taxes even if they no longer fall under the scope of the Act on CIT, or if their registered seat is transferred to a foreign country, or if their Hungarian residency ceases due to the transfer of place of effective management.
- In future, if the VAT group ceases, the members of the group would not be required to file an interim tax return on every type of tax.
- In the event of payments made through the POS terminal, the Government would be

Content:

- Corporate income tax
- Personal income tax
- Social Security
- Value Added Tax
- Local Business Tax
- Vehicle Tax / Company Car Tax
- Stamp Duties
- Customs regulations
- Excise Tax
- Tax Procedure
- Accounting
- Green Tax

authorized to determine the maximum amount of commission, fees and other costs enforceable by the credit institution and charged by the enterprise to the client.

The provisions amending the Act on Tax Procedure – with the above mentioned exceptions – would enter into force as of 1 January 2009.

Accounting

- According to the suggested amendment to the Act on Accounting, the daily average amount of closing cash balance (an average calculated with respect to each calendar month) cannot exceed 1.2% of the total income of the previous business year (n.b. where the total income of the previous year did not reach HUF 500,000, then HUF 500,000 would become the base figure). There is no provision in the bill with regard to any special penalty regime concerning the violation of the petty cash rules. Therefore, if the cash amount exceeds the above mentioned limit, - according to the Act on Tax Procedure – a HUF 500,000 default penalty could be imposed on the basis that the taxpayer has infringed the provisions of the Act on Accounting regarding the cash management regulation.
- The opportunities for bookkeeping and statutory financial reporting in a foreign currency would also be extended. From financial year 2009, an entrepreneur may opt for foreign currency bookkeeping if its "functional currency" is other than the Hungarian forint and where more than 50% of its (a) income and expenses and (b) financial assets and liabilities, taken together, have been incurred in a single foreign currency in the current business year and in the previous business year (currently this rate is 75%). This rule may be applied to annual reports prepared for the financial year beginning in 2008. Furthermore, according to the proposal, from the financial year 2010, the aforementioned rate would decrease to 25%. As a further alleviation, the entrepreneur (who is entitled to prepare its annual report in a foreign currency) would also be allowed to prepare its annual report in euro instead of the functional currency; however, this fact must then be indicated in the deed of foundation.

The amendments of the Act on Accounting would enter into force as of 1 January 2009, with the condition that they have to be applied first to the report prepared on the business year starting in 2009. Certain amended provisions of the Act on Accounting are also applicable to reports prepared in relation to the 2008 business year.

Green Tax

- The amendment primarily affects the regulation on green tax with respect to beverage packaging. In connection with the current rules, the European Committee already commenced infringement procedure against Hungary in 2006. The proposal – to comply with the EU rules – would determine the rate of green tax uniformly, irrespective of the content of the packaging, while the rate for a unit of package would remain the same for both Hungarian and foreign manufacturers.
- The rules of exemption from green tax would also change. Full exemption by partial refill of beverage packages would cease, and, in future taxpayers would be fully exempt from green tax when packaging is effectively refilled. Exemption from green tax would also be available for taxpayers for the recollection and recycling of beverage packaging.
- In the case of contract manufacturing, the contractor would be obliged to pay the green tax (this planned amendment would not only apply to beverage packaging but to all products subject to green tax).

Unfortunately, most of the problems earlier identified in relation to green tax legislation would remain unsolved if the draft bill is passed by Parliament. The regulation of administration liabilities would remain unchanged; therefore the system remains extremely difficult and complicated. Furthermore, the taxation point in the case of importation from third countries and intra-Community acquisition would not be harmonized, either. Currently, intra-Community acquisition of goods is subject to green tax only when it is purchased for own consumption or when it is resold to customers in Hungary; however, green tax is immediately payable on the importation of goods, regardless of its purpose (e.g. warehousing, repair, etc). Therefore, importation is sometimes managed via other EU member states and goods are transported into Hungary in the frame of intra-community acquisition. Furthermore, the Act on Green Tax and the Act on VAT would continue to lack harmonization in many respects; therefore, in the case of international transactions, a situation may still develop where VAT is not payable, while green tax is (e.g. a sale in a VAT warehouse). Even though green tax is reclaimable later, payment of green tax (due to the administrative barriers) represents a definite competitive disadvantage for Hungarian enterprises.

Ernst & Young

Assurance | Tax | Transactions | Advisory

About Ernst & Young

Ernst & Young is a global leader in assurance, tax, transaction and advisory services. Worldwide, our 130,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve potential.

For more information, please visit www.ey.com

The information in this newsletter is correct to the best of our knowledge and belief at the time of going to press. Please note that the information in our newsletter is not intended to be relied on as tax advice and cannot replace consultation with tax advisors.

If you would like to include anyone from your organization to our newsletter mailing list, or would like your name to be removed from the list of recipients, please reply to our e-mail address (ey.tax@hu.ey.com), or fax: (+36 1) 451 8199.

For further information please contact:

Botond Rencz
(+36 1) 451 8602
botond.rencz@hu.ey.com

Róbert Heinczinger
(+36 1) 451 8262
robert.heinczinger@hu.ey.com

Tibor Pálszabó
(+36 1) 451 8601
tibor.palszabo@hu.ey.com

Dénes Szabó
(+36 1) 451 8209
denes.szabo@hu.ey.com

Balázs Szölgyémy
(+36 1) 451 8608
balazs.szolgyemy@hu.ey.com

Szabolcs Dr. Vámosi-Nagy
(+36 1) 451 8603
szabolcs.vamosi-nagy@hu.ey.com

Péter Vaszari
(+36 1) 451 8616
peter.vaszari@hu.ey.com

© 2008 EYGM Limited.
All Rights Reserved.

Ernst & Young refers to the global organization of member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.