



Tax law changes in Hungary

2021

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On 17 November 2020, Parliament adopted the tax laws for 2021.

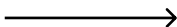
Some amendments, such as the reduced rate of 5% VAT for construction of residential properties, have been included in other bills, however, our summary contains these changes as well.



In general, the tax package of this year brings a lot of small changes and is free from bigger surprises. The digitalisation of tax system will continue, the Tax Authority will take over the preparation of VAT returns from the corporations.

The upper cap for development reserve will be abolished, the rate of small enterprise tax will be decreased, and the VAT regulations related to e-commerce will be simpler and stricter at the same time. As a significant change, in the future, the local business tax returns will have to be submitted to the Tax Authority instead of the local municipalities.

We summarized the major amendments in detail below.



01 - CORPORATE INCOME TAX

Development Reserve

As a positive change, the HUF 10 billion cap on the tax base deduction related to the development reserve will be abolished as of 1 January 2021. However, the absolute cap on the tax base deduction remains, which is the profit before tax for the tax year.

Rules of Permanent Establishments

The amendment tightened the rules related to permanent establishments. According to the new provision, services provided by a foreign entity in Hungary with its own employee(s) or another natural person(s) engaged by the foreign entity may create a permanent establishment for the foreign entity if the duration of the service exceeds 183 days.

Under the new rules, permanent establishment is created for a foreign enterprise in Hungary if the activity complies with the permanent establishment definitions of the relevant double tax treaty, regardless the fact that no permanent establishment would otherwise be created under the Hungarian rules.

Tax base correction regarding dividends waived

The tax base amendment related to dividend waived has been repealed due to the amendment of Act on Accounting. In the future, dividends waived should be accounted through the equity without any P&L effect.

Controlled Foreign Corporation (“CFC”)

According to the amendment, dividends and capital gains from a CFC are exempted from taxation in proportion to the income deriving from “real legal transactions” of a CFC.

As a result, if a CFC is carrying out both real and non-real legal transactions, only the non-real legal transactions will be subject to Hungarian corporate income tax liability. A legal transaction is considered as a non-real transaction if it is carried out primarily for the purpose of obtaining tax advantage (if additional conditions are also met.)

If a foreign legal person (or permanent establishment) has a tax residency in a “non-cooperative state”, exemptions related to the CFC cannot be applied (de minimis rules). A decree of the Ministry of Finance will stipulate the so-called blacklisted states.

Other Amendments



“Exit tax”

Exit tax may be paid in five instalments not only if the place of management is relocated, but also if the assets or the business activity of the domestic permanent establishment is transferred.

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Transfer price adjustment

in the case of transactions between the domestic taxpayer and its foreign permanent establishment, the domestic taxpayer may reduce its tax base by the cost and expenses of the foreign permanent establishment instead of applying a transfer price adjustment if it does not possess a declaration regarding the increase of the tax base by the related party.

The maximum amount of the reduction depends on the revenues of the foreign permanent establishment, but additional limits specified by the law must also be considered. This provision shall apply from the tax year 2021.

02 - VAT

Online invoice-data reporting

Perhaps one of the most important changes in 2020 is that the online invoice-data reporting system has been completely introduced. From 1 July 2020, the reporting obligation was extended to all domestic taxpayers without a threshold. From 1 January 2021, all invoices issued under a Hungarian tax number are covered by the data reporting requirement.

This means that, from this latter date, data must also be provided on transactions with individuals, non-taxable organizations (e.g. associations), intra-community supplies of goods and invoices issued for exports of goods to third countries. Further, invoices issued by a taxpayer established in Hungary for transactions subject to reverse charge mechanism will also be subject to the reporting obligation. The obligation to provide information does not apply to distance services which are carried out in another Member State and in respect of which the taxable person fulfils his tax payment obligation under the MOSS system.

In addition to the above, from 4 January 2021, further provisions on the online invoice-data reporting will take effect. If the taxable person makes a taxable supply of goods or services free of charge, it will be required to provide information on this fact and whether the VAT will be reimbursed by the purchaser of the product or the recipient of the service. In the reporting it must also be indicated whether or not the transaction is within the VAT Act's territorial scope.

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Upon reporting data on the final invoice, the taxpayer will have to provide more extensive data on the advance invoices than currently. In addition, further changes will be introduced for utility settlement invoices and invoices containing full scope of data. The scope of the data to be reported is specified in the Online Invoice 3.0 interface issued by the tax authority.

Draft VAT return

The introduction of the draft VAT return aims the reduction of the administration burdens. From 1 July 2021 onwards, the taxpayers may fulfil their obligation by the VAT return prepared by the Tax Authority. The draft return will not automatically become a valid return, the taxpayers must accept it by the deadline for submitting the return or make the necessary amendments and additions. By accepting or amending the draft return, the taxpayers also declare their VAT deductible and fulfil their domestic summary reporting obligation on incoming invoices.

The draft VAT return is prepared by the tax authority firstly for normal taxpayers for the return period including 1 July 2021. In special cases (such as legal succession, changes in the frequency of returns, or if the taxpayer is under liquidation), this new option will only open from 1 July 2022.

Labour hiring

The general reverse charge taxation applicable to hire of labour will be removed and the reverse charge will only apply to labour hire in the construction industry. Reverse charge mechanism can be applied in the construction industry only if the hire of labour is related to construction and installation work for the creation, transformation, and demolition of real estate – it is not required that this activity be subject to a building permit.

The above restriction on the application of reverse charge taxation was already introduced by a legislation adopted earlier (in 2018), according to which the restriction would have entered into force on 1 January 2021. However, according to the amendment, the date of entry into force will be adjusted to the date when the extension of the related derogation granted to Hungary by the EU is refused and is published in the Hungarian Gazette.

5% VAT on rust-zone apartment development

As part of the national home creation action plan, the 5% VAT rate has been extended to all new housing properties in addition to ones being built in the rust zone action area. In connection with the sale of new apartments, the 5% VAT rate should be applied first where the tax liability is 1 January 2021 or later.

The above provision will remain in effect until 31 December 2022 by creating the possibility of an additional four-year optional application.

Bad debts

From 1 January 2021 taxpayers will be entitled to reduce their tax base retrospectively regarding bad debts, even if the customer is not a taxable person. The conditions for the reduction of the tax base will be essentially the same in this case as they are for the transactions with customers.

In case the customer is not a taxable person, it will be still possible to apply the tax base reduction related to bad debts for earlier transactions which were completed after 31 December 2015, the latest

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E-commerce

After 1 July 2021, the VAT and customs rules related to e-commerce will change throughout the EU, which must therefore be implemented in the Hungarian tax system as well.

On the one hand, the regulation of online commerce is being put on a new footing. From next summer, the concept of distance selling will also cover the distance selling of products within the Community as well as the distance selling of a product from a third country. The two cases can be distinguished according to whether the product was dispatched from a Member State or from a third country and transported to a non-taxable customer (mainly a private individual). The purpose of the new rules is to ensure that the tax liability arises uniformly in the Member State in which the customer is established (taxation in the country of destination). In the case of the distance sale of a product from a third country, the rules stipulate that the actual tax liability arises on the ground of the distance sale or importation of the product.

In the case of distance services and intra-Community distance sales, the requirement to submit tax returns in several countries and to establish tax liability under the rules of several countries can be a significant administrative burden for small businesses.

In the case of services that can be provided remotely, special rule has already been included in VAT Act stipulating that below the annual net income threshold of EUR 10,000, it is sufficient for a Hungarian small business to declare and pay the tax in the Hungarian VAT return in Hungary. From July 2021, the bill will extend this facilitation to those who make intra-Community distance sales. The VAT shall then be payable in the member state in which the product was dispatched, or the transportation has begun. It is important to note that the taxation under the country of destination can also be opted for below the threshold. However, taxable persons may not alter their choice for a period of three years.

The essence of the One-Stop-Shop regime is that in cases where the taxpayer would have to register, invoice and pay tax in more countries, it is sufficient to do comply with these obligations in one EU member state. The tax authority will forward the tax paid by the taxpayer to the tax authorities in the other member states. Currently the One-Stop-Shop regime can be used only for the services provided remotely. The range of One-Stop-Shop regime will be expanding from 1 July 2021, as it will be applicable to:

- all intra-community remote sales,
- not only for remotely provided services, but also for services supplied to a non-taxable person established in another member state if a special place of supply applies (even if the service provider is established outside the EU), and
- for the distance selling of imported goods where the value does not exceed EUR 150 (except excisable products)

VAT groups

From 1 January 2021, if – as a result of reorganizations – the taxpayers' related party relationships are rearranged and members of a VAT group join to another VAT group, the VAT group memberships can be maintained without interruption.

Taxpayers will have the opportunity to indicate in their application to the tax authorities the future date when they wish to set up, terminate, join or leave the VAT group.

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03 - PERSONAL INCOME TAX

Tax free epidemiological testing

Epidemiological testing is tax free regardless of the time it was granted. This means that epidemiological testing financed by the disburser during the first wave of the COVID-19 epidemic is not subject to personal income tax. The regulation enters into force in 2020 after the day of its publication (27 November 2020) and it can be applied retrospectively.

Simplified taxation of foreign cast and crew members

From 1 January 2021, in the case of motion pictures shot in Hungary, foreign cast and crew members reported to the public register of the National Film Office are entitled to opt for simplified taxation in connection with their foreign sourced income taxable in Hungary even though the length of their stay in Hungary exceeds 183 days. Furthermore, to qualify as non-domestic resident for social security purposes will not be a condition for the simplified taxation anymore. Therefore, foreign cast and crew members can fulfil their reporting liabilities by submitting a single simplified tax return in case of several succeeding film shootings as well.

04 - SMALL TAXES

TAX FOR SMALL ENTERPRISES (“KIVA”)

From 1 January 2021, the tax base for small enterprises decreases from 12% to 11% in line with the social security tax reduction. However, eligibility limit linked to the revenues and balance sheet total is raised from 1 billion HUF to 3 billion HUF. Further, the KIVA taxpayer status is lost if the revenues exceed HUF 6 billion (the current threshold is 3 billion HUF).

Under the current rules, the KIVA taxpayer status terminates if the taxpayer's enforceable net tax liability registered by the tax authority exceeds 1 million HUF by the end of the year. The tax authority issues a decree on the termination of the taxpayer status. According to the amendment, the status can be maintained, if the liability is paid before the decree comes into force.

ITEMIZED TAX FOR SMALL TAXPAYERS (“KATA”)

Significantly stricter rules in the KATA tax regime

As a result of the amendment, the regulation on KATA becomes significantly stricter

- If a disburser makes payment to a KATA taxpayer who is regarded its related party, the disburser should assess, report and pay 40% KATA surtax on this income by the 12th day following the month of the payment. The disburser shall indicate the tax number, name, and address of the KATA taxpayer in its tax return.
- In the case of non-related parties, if a disburser makes payment to a KATA taxpayer in excess of HUF 3 million aggregated from the beginning of the calendar year, the disburser should assess, report and pay 40% KATA surtax on the income exceeding HUF 3 million. Certain amounts should be excluded from the tax base (e.g., the amount mentioned in the above point).
- The disburser assesses, reports, and pays the KATA surtax at first by the 12th day following the month in which the threshold has been exceeded. These tax compliance steps are to be repeated following each month in which the disburser provides



income to the KATA taxpayer that is exceeding the threshold.

- The disburser is obliged to inform the KATA taxpayer about the amount after which it has paid the 40% KATA surtax by 31st January of the year following the tax year.

The provisions regulating the cases when the KATA taxpayer receives income from a foreign payer have become stricter as well:

- If a KATA taxpayer receives revenues from a foreign business partner with whom they qualify as related parties, the KATA taxpayer pays a 40% KATA surtax on this revenue by the 12th day following the month of the payment. However, the tax base is not the total revenues, but 71.42% thereof.

If the total revenues received by the KATA taxpayer from a foreign non-related party exceeds HUF 3 million aggregated from the beginning of the calendar year, the KATA taxpayer should pay 40% KATA surtax on the amount exceeding the HUF 3 million threshold. The tax base is 71.42% of the total revenues in this case as well.

- If the KATA taxpayer is obliged to pay the KATA surtax based on the above, it shall report the revenues subject to KATA surtax, as well as the name and address of the business partners concerned broken down monthly in its annual tax return by 25th February of the following year.

It is important that the revenues subject to KATA surtax should be disregarded when calculating the general annual KATA threshold of HUF 12 million. Furthermore, the 40% KATA surtax obligation does not exempt the KATA taxpayer from the itemized tax payment obligation.

The KATA taxpayers will be obliged to provide certain additional information to the disbursers. Upon entering a contractual relationship, the KATA taxpayer should inform the disburser in writing about its KATA taxpayer status. Moreover, the KATA taxpayer should inform the disburser about the termination or re-establishment of its KATA taxpayer status before any of these changes by indicating the effective date of the change.

The above amendments will enter into force as of 1 January 2021.

05 - LOCAL TAXES

Local Business Tax

Transfer pricing adjustment

Similar to the corporate income tax rules, from 2021 transfer pricing adjustment is applicable to the local business tax base in the case of related parties. However, transfer pricing adjustment decreasing the tax base will only be applicable if the taxpayer possesses the declaration of the related party stating that it increases its tax base by the same amount. Adjustment can be carried out in one or more instalments. (The modification adopts the rules already interpreted as such under to the Act on Rules of Taxation).

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Allocation of local business tax base

From 1 January 2021, the rules of local business tax base allocation will change. According to the currently effective regulation, the asset value of vehicles is considered at the municipality where the vehicles are stored. Based on the amendment, if the taxpayer is permanently letting or leasing the vehicle, the asset value of vehicles will be considered in proportion of the payroll related expenditures incurred at the registered seat or the permanent establishment.

Simplification of administration

Top-up obligation

Following the changes in the corporate income tax rules, from 2020, there will be no top up obligation for the local business tax to be made before the end of the tax year. This favourable change also applies to enterprises with financial year different from the calendar year if their tax year has not ended by 15 July 2020.

Temporary business activity

From 2021, temporary business activity is not subject to local business tax, thus taxpayers are not obliged to pay local business tax on their construction activity if it lasts less than 180 days. The temporary tax obligation of entrepreneurs without Hungarian registered seat or permanent establishment will also cease.

Tax return obligation

From 2021, with certain exemptions taxpayers shall submit their local business tax returns to the state tax authority – instead of local municipalities – electronically, using a form issued and accepted by the state tax authority. Data reporting, tax return and registration (change notice) forms are also going to be standardized from next year as well.

Vehicle tax

Pursuant to the Act on State Budget, from 1 January 2021 the income from vehicle tax should belong to the State Budget, meaning that the municipalities will suffer significant loss of their revenues. Consequently, the tax authority's tasks related to vehicle tax will be transferred from the local municipalities to the state tax authority.

The state tax authority is entitled to exercise this competency only in connection with the vehicle tax obligations emerging after 31 December 2020.



06 - TAX ADMINISTRATION

Reliable taxpayer rating

From 1 January 2021, a group taxpayer's reliable taxpayer status will not cease if a newly founded taxpayer joins the group that is unable to fulfil the multi-year operation requirement. Therefore, a group will not lose its reliable taxpayer status if a newly founded member joins the group that would not otherwise qualify as a reliable taxpayer. However, if a company that has been operating for a year or two and does not qualify as a reliable taxpayer is included in the group, the group will, as a general rule, lose its reliable taxpayer rating.

In addition to above, for ratings following the quarter including 18 July 2020, the taxpayer's reliable tax rating should not be abolished during the emergency period or within 30 days thereafter (i.e., 11 March 2020 and 18 July 2020) with reference to the fact that an enforcement procedure has been initiated. This provision shall also apply from the tax year 1 January 2021.

Instalment payment and deferral benefits

As of 1 January 2021, as a part of the Government's program aimed at the reduction administration, the following measures are introduced:

- Reliable taxpayers can apply the automatic 12-month instalment payment up to HUF 3 million tax liability (instead of the current threshold of HUF 1.5 million) once a year;
- Private individuals can apply maximum of 12-month instalment payment without any surcharges for tax liability of HUF 1 million (instead of the current threshold of HUF 500,000) once a year;
- Private individuals who are not engaged in business activities and are not required to pay VAT may request the automatic instalment payment up to HUF 500,000 for 12 months in their personal income tax return (the current threshold is HUF 200,000 for 6 months).

Request for supervisory measure

Similar to the procedure of an appeal, from 1 January 2021, in the request for a supervisory measure it will be not possible to present new facts or rely on new evidence

– other than nullification –

which the claimant was aware before making a first instance decision, or before the deadline for submitting a comment expired, if – despite the Tax Authority's request – the claimant did not present and did not refer to these evidences.



About Andersen

Andersen in Hungary is a tax and law firm based in Budapest, established in 2020 with the combination of Szabo Kelemen & Partners and OrienTax. Andersen's tax and legal advisory team in Hungary includes more than 90 tax professionals and lawyers. Andersen in Hungary serves more than 600 clients from various industries and is the fifth largest tax and legal practice in Hungary (after the Big Four).

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