

Amendments of the Act about Tax Procedure

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Dear Clients,

Hereinafter we would like to draw your attention to the most important changes concerning the Act on the Rules of Taxation (ART), published on 27th November 2015 in the Official Gazette. The new regulations shall come into force as of January 1, 2016.

Taxpayer's qualification

One of the major novelties of the ART is the introduction of the taxpayer's qualification. During the qualification process, **the Hungarian Tax Authority (HTA) distinguishes reliable and risky taxpayers**. The taxpayer will be qualified as reliable upon simultaneously meeting the ten different conditions listed beneath. To be characterized as a risky taxpayer; however, it is enough to meet one of the given four conditions. The criteria of the qualifications are shown in the tables hereunder.

Provided that it was grouped neither in the reliable nor in the risky category, the taxpayer stays in the „normal/general” tax status implicitly, and remains within the already known.

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Reliable taxpayer
<ul style="list-style-type: none"> ↪ The taxpayer has continuously been operating for at least 3 years or it has been a registered taxable person for at least 3 years AND
<p>Within the current and the previous 5 tax years:</p> <ul style="list-style-type: none"> ↪ The total amount of its tax differences determined by the HTA, did not exceed 3 % of the taxpayer's tax capacity assessed in the current tax year ↪ The taxpayer was not / has not been falling under enforcement procedure (aside from the tax authority's right of withholding and transfers) ↪ The taxpayer did not undergo / has not undergone Bankruptcy-, Liquidation-, Winding-up Proceedings ↪ Its tax number was not / has not been under suspension, which can happen when the taxpayer failed to comply – upon receipt of notice from the tax authority – with the obligation of declaration or tax payment liability within 365 days from the statutory deadline or from the original due date. ↪ Its tax number was not / has not been withdrawn ↪ The taxpayer was not / has not been subjected to enhanced regulatory supervision <p>AND</p>
<ul style="list-style-type: none"> ↪ The taxpayer does not have a tax debt exceeding HUF 500,000 AND
<ul style="list-style-type: none"> ↪ In the previous 2 tax years the amount of the overdue default penalties did not exceed 1 % of the taxpayer's tax capacity assessed in the current tax year AND
<ul style="list-style-type: none"> ↪ It is not qualified as a risky taxpayer.

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Risky taxpayer

Provided that at least one of the undermentioned conditions exists:

- The taxpayer is listed within those who have substantial tax arrears (in case of individuals, over HUF 10 million, for other taxpayers over HUF 100 million) **OR**
- The taxpayer is listed within those who have substantial tax debt (in case of individuals over HUF 10 million, for other taxpayers over HUF 100 million) **OR**
- The taxpayer is listed as having employees not registered; **OR**
- The HTA sentenced the taxpayer to store closure repeatedly within one year.

Regarding the risky taxpayers, the current qualification is obtained for one year (in some cases it might be avoidable).

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While being a reliable taxpayer results in some defined advantages, the law prescribes stricter rules to be applied in connection with the risky taxpayers.

The **reliable taxpayers** will count upon shorter deadlines in connection with tax assessment and the refund of taxes, and they can expect – even when they make mistakes - some advantages in reference to default penalty and tax penalty.

- For example in their case, the period of the tax assessment will be limited in 180 days at the longest, provided that during the assessment they are still qualified as reliable and they cooperate with the tax authority.
- They are given moratorium for revision to comply obligations in connection with registration, data disclosure and tax returns (excluding obligations which concern notification of employment and EKAER). For reliable taxpayers, the tax authority will only impose default penalty if the advanced appeal to comply with the tax authority's request for remedying deficiencies and fulfilling obligations expired.
- The abovementioned regulations cannot be applied in case of such defaults which result in the termination of the current qualification.

Eventually the reliable taxpayers can apply for the allowance of automatic instalment payment once a year, which enables them to apply a 12-month-long instalment free of interests on a debit between HUF 10,000 - 500,000 (apart from the cases of personal income tax, custom advances, local taxes). The refundable VAT may also be reclaimed with a shorter deadline (30/45 days) according to the common terms.

The **risky taxpayers** will face more severe rules regarding both penalties and tax assessment. In their case, the period of the tax assessment is automatically extended by 60 days, the deadline of VAT refund is 75 days without the possibility of reduction, and the level of late payment interest will be quintuple of the prevailing central bank base rate.

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The qualification will take place quarterly and the first qualification will pertain the first quarter of 2016. In the meantime the current qualification (in some cases) may change and as long as the taxpayer takes objections to it, the current qualification can be contested. The qualification of risky taxpayer obtains for one year counting from the day on which the conditions that had resulted in the qualification occurred or obtains until the next quarter of qualification if the tax arrears in question and the related penalties, surcharges and tax debts have already been paid.

Depending on their qualification, the taxpayers may expect more permissive or more severe penalties, which are summarized in the table below:

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	Reliable taxpayer		Risky taxpayer
<i>The upper limit of Tax penalty</i>	50 % of the upper limit of the Tax penalty, under certain conditions	<i>The under limit of Tax and Default Penalties</i>	The penalty cannot be dismissed and it is at least 50 % of its upper limit, under certain conditions
<i>The upper limit of Default penalty</i>	50 % of the upper limit of the Default penalty, under certain conditions	<i>The upper limit of Default Penalty</i>	Within the general rules of imposing the Default Penalty, it is 150 % of its upper limit, under certain conditions

The course of tax registration

During the course of tax registration, the scope of monitored taxpayers will be extended. The tax authority, if it comes to the knowledge of any change in the person of the executive officers, directors, or members entitled to exercise representation, or members or shareholders, shall investigate within 30 days of gaining knowledge of the change, as to whether either of the impediments which can result in withdrawal of the tax number apply on account of the change.

Further modifications

Several general provisions were also modified.

Correlating with the modifications of the act on Personal Income Tax (PIT), there are some amendments in the ART, taking into account **the tax return statement and the tax return offerings**. We introduce the detailed regulations at part personal income tax.

For instance, the tax authority will request the taxpayer to remedy the deficiencies within 10 days if the taxpayer fails to meet any requirements prescribed for admission into **the register of taxpayers free of tax debt obligations** on the day of that month in which the application to that affect is submitted. The deadline of the administration will be 30 days henceforward on the stipulation that it may be extended once until the end of the prescribed deadline by maximum 30 days –exceptionally in justified cases-, by the executive of the competent tax authority.

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Furthermore, when the **taxpayer is no longer entitled to appear on the register of taxpayers free of tax debt obligations**, the taxpayer can make written comments within 8 days of receiving the notice, which comments will be investigated by the tax authority within also 8 days and in case of rightful application, the taxpayer will appear continually in the register. All these rules eventuate in flexibility for those individuals applying EKAER, whose participation in the register of taxpayers free of tax debt obligations may results in exemption to provide risk guarantee.

The modification of the ART **concerns EKAER** (*Electronic Public Road Transportation Control System*) in another way too. In case of transporting goods of a commercial nature, the tax authority will not make report on the investigation if no wrongdoing was stated.

Legislation affecting **the VAT registered taxable persons** also changed. The tax audit deadlines cannot exceed 180 days unless the taxpayer failed to comply the obligation for cooperation obstructively during the assessment period (e.g.: the taxpayer is not available or not willing to submit the necessary documents etc.). Further, in the event of non-compliance (including the obligation of notification, data disclosure and submitting tax returns) or in case of incorrect, incomplete supplied information, the tax authority, without imposing default penalty, shall instruct these taxpayers first to fulfil the duties within a given deadline.

Default penalty can only be imposed if the taxpayer fails to fulfil the abovementioned obligations in time in spite of the receipt of notice. This facilitation cannot be applied in the matter of some obligations (registration, employment and EKAER).

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