

 EXPERT OPINION

## New Advertising Tax Rules Will Give Many a Headache: Important Not Only for Media Companies



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As of January 1, foreign advertisers without a presence in Hungary should prepare for extremely strict sanctions for attempts to avoid Hungarian advertising taxation. The aim is that the threats are now so significant that it would not be worth the risk for anyone, says Judit Jancsa-Pék, partner and leading tax expert of LeitnerLeitner.

**F**oreign entities not registered in Hungary under any other tax type must register with the tax authority within 15 days of commencing their publishing activity in the country. They are also obliged to issue declarations to service recipients about their advertising tax status. In case of a failure to make this registration and/or declaration, from January 1 extreme sanctions may be levied.

The marketing and advertising departments – even if located out of the country – of international groups present in Hungary may also fall victim to the persecution of the big internet service providers. Namely because, under the wording of the law, advertising tax obligations such as tax registration and issuance of a declaration are relevant for any company, irrespective of its place of establishment, that places an advertisement on the internet, predominantly in the Hungarian language or on websites written predominantly in Hungarian, or in any printed matter regardless of the publication language. However, should the tax base derived from the income and costs of the advertisement remain below HUF 100 million (approximately EUR 322,500), that results in no effective advertising tax payable, and also falls under an exemption from the tax return preparation and submission obligations.

Although it was probably not the intention of law to importune such international groups, the present wording does not exclude them and full security may only be achieved by the fulfilment of tax registration and issuance of declarations, even if there will not be an effective advertisement tax payment and tax return filing obligation. Considering the connected uncertainties, LeitnerLeitner asked the Hungarian finance ministry for a written opinion, says Jancsa-Pék, in order to find a solution for the problem that offers some comfort. In the meantime, however, the following sanctions shall be kept in mind:

Upon failure to register for the tax, the tax authority notifies and calls on the non-Hungarian taxpayer to fulfil its liability, adding a default penalty of HUF 10 mln (approximately EUR 32,250). Then, the tax authority will repeat the notifications on each subsequent day, and triples the penalty to HUF 30 mln, 90 mln, 270 mln etc. (EUR 96,750 – EUR 290,250 – EUR 870,750, etc.).

The sanctions for missing declarations are equally relevant for Hungarians and non-Hungarians, where the tax authority calls on the taxpayer to make up for the declaration within eight days. For non-compliance, a default penalty of HUF 500,000 will be levied at first. However, in case the notification is unsuccessful, repeated notifications parallel with the default penalty of as much as HUF 10 mln are levied, which amount will be tripled – just as above – in case of each unsuccessful notification.

The above detailed sanctions are accumulated until the penalty reaches the maximum of HUF 1 billion (more than EUR 3 mln). Due to the fact that notifications will be issued daily, this will arise within a week.

In addition to the above, the tax authority will apply a presumption and impose the advertising tax payable at the statutory amount, which will come to HUF 3 bln (more than EUR 9 mln). The taxpayer is obliged to rebut the presumption and prove the contrary within 30 days from receipt of the tax authority's resolution.

Therefore, Jancsa-Pék suggests the highest care be taken by all non-Hungarian group companies that may be considered to perform taxable advertising activities within the scope of the advertising act.

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