International Bar Association Annual Conference 2020

Recent developments in international taxation

Hungary

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Overview

Despite a number of tax bills having been adopted over the course of the past year, including three tax packages (ie, legislative acts each of which modified multiple tax acts), there was no deviation from the tax policy followed by Hungary in previous years. Therefore, the Hungarian tax environment remains favourable to foreign investments by offering a low corporate income tax burden, relatively low (and steadily decreasing) payroll taxes, and by granting several tax incentives and allowances.

Developments in 2019

Legislative measures adopted in 2019 and of relevance to foreign investors and, broadly, all those vested in the cross-border flows of capital, goods and services, which, unless noted otherwise, entered into force as of 1 January 2020, are as follows:

- exit taxation enabling Hungary to tax the economic value of capital gains created in its territory yet unrealised at the time of exit when relocating assets, business operations or the place of effective management from Hungary;
- hybrid mismatch rules to combat double deduction or deduction without inclusion outcomes resulting from differences in the legal characterisation of payments, financial instruments and entities, or in the allocation of payments under the laws of two or more jurisdictions;
- mandatory disclosure rules regarding certain cross-border arrangements aimed at implementing Directive 2018/822 ('DAC 6'), which entered into force as of 1 July 2020 (however, a six-month delay has been granted to taxpayers concerned due to the Covid-19 outbreak);
- new rules for call-off stocks (eg, information on the supply concerned should be set out in the recapitulative statement to be submitted by the supplier. If 12 months passed without the goods being called off, the call-off stock simplification would no longer apply and the VAT implications of the transfer of own goods to another Member State would set in);
- the obligation of suppliers to duly indicate intra-Community supplies in the recapitulative statement as a condition for them to be able to rely on the tax exemption for such supplies;
- in the case of a chain transaction, the intra-Community supply is deemed to have been made by the intermediary who has arranged for the transport if the intermediary communicates to its supplier the VAT identification number issued to the intermediary by the Member State from which the goods are dispatched or transported;
- the real-time invoice reporting obligation of suppliers will be extended to all invoices documenting domestic business-to-business (B2B) supplies irrespective of the amount of VAT charged in such invoices as of 1 July 2020 (previously, this obligation could have only set in if the amount of VAT reached 100,000 forints, ie, approximately €300);
- starting from 1 January 2021, the scope of the real-time invoice reporting obligation of suppliers will be further extended to cover invoices documenting domestic business-to-consumer (B2C) supplies as well as exports and intra-Community supplies;
- zero per cent rate for the tax on advertisement turnover between 1 July 2019 and 31 December 2022 instead of the flat rate of 7.5 per cent that had been in force since 1 July 2017. This tax had initially

been introduced with progressive tax rates, which were found to constitute state aid incompatible with the internal market by a decision of the European Commission. This decision was annulled by the judgment of the General Court of the Court of Justice of the European Union (CJEU) in T-20/17 – *Hungary v Commission*; however, this judgment was appealed by the European Commission, and as a result, the case is still pending.

In addition to the legislative developments, the tax authority initiated a public consultation in December 2019 on the introduction of the Standard Audit File-Tax (SAF-T), which is an international standard for the electronic exchange of reliable accounting data from organisations to a national tax authority or external auditors set out in the recommendations of the Organisation for Economic Co-operation and Development (OECD). The eventual adoption of the Hungarian SAF-T may result in shorter and more efficient tax audits by boosting the tax authority's capabilities to identify and focus on tax risks.

Developments in 2020

Legislative measures introduced in 2020 worth mentioning are as follows:

(Re)introduction of the retail tax

The retail tax is, in essence, the dusting off of a previous sectoral tax levied between 2010 and 2013 following the judgment of the CJEU handed down in case C-323/18 in early March 2020 finding the main characteristics of the tax compatible with EU law. Any person or entity pursuing business activities following within the scope of either of the Nomenclature des Activités Économiques dans la Communauté Européenne (NACE) codes set out in the legislation may qualify as a taxpayer. As a new element compared with the previous sectoral tax, the tax applies to the handing over of goods to customers in Hungary by a foreign resident where such goods are not supplied via a Hungarian branch office. Therefore, in contrast to the previous sectoral tax, even foreign residents (eg, certain webshops) may incur retail tax liability. The tax base is the net sales revenue of the taxable person arising from the retail activities or the net consideration of the handing over of goods referred to above. As a special anti-abuse rule, the tax bases of certain related party taxpayers should be consolidated, and the tax liabilities of each taxpayer should be paid in proportion to their net sales revenues. The legislation sets out four marginal tax bands with steeply progressive rates ranging from zero per cent to 2.5 per cent. This tax is likely to have a significant impact on the profits of large retail businesses, as they have limited room for renegotiating contractual terms with suppliers to shift the tax expenses due to recently introduced legislative constraints.

The Electronic Public Road Transportation Control System

The Electronic Public Road Transportation Control System (Elektronikus Közúti Áruforgalom-Ellenőrző Rendszer or EKAER) is to undergo a major overhaul. According to the respective legislative recitals, this will result in the scope of this regime being, in essence, confined to products deemed 'risky' (as regards the likelihood of VAT fraud being committed in respect of such product categories) by the legislation. This development could significantly alleviate the administrative burden of businesses involved in the transportation of goods, as well as consequently reduce the risk of being sanctioned by the tax authority, even for mishaps of an administrative nature devoid of any fraudulent intent connected to obligations under the EKAER regime.

Outlook

There are no signs of a significant change of course in Hungarian tax policy. The Hungarian Government has been communicating that it intends to alleviate the tax compliance burden of businesses and to substantially decrease the number of taxes; the latter, however, remains to be seen. Another key area is the digitalisation of the tax administration (eg, as a result of extending the scope of real-time invoice reporting, the tax authority may better counter VAT fraud and further reduce the VAT gap). The aforementioned objectives could overlap, for example, the tax authority may become capable

of preparing draft VAT returns starting from 2021 due to the extension of the scope of the real-time invoice reporting obligation.