

PRESS RELEASE

WHY ARE WE NOT NOTIFIED OF OUR TAXPAYER CLASSIFICATION? WHY IS IT WORTH BEING A RELIABLE TAXPAYER?

Budapest - Hungary, 2 June 2016 – An analysis by the tax expert of Faludi Wolf Theiss Attorneys at Law on reliable taxpayer classification

As of 1 May 2016, the classification of Hungarian taxpayers for Q1 2016 was carried out by the tax authority. However, only those taxpayers received electronic notification, which were classified as *reliable* or *risky* by the tax authority, others did not. What may be the reasons if a company did not receive notification of its taxpayer classification? Why is it worth being a *reliable* taxpayer? The above questions are answered by the tax expert of Faludi Wolf Theiss Attorneys at Law below:

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“Taxpayers who believe that they are in compliance with the statutory conditions required for being classified as a reliable taxpayer but so far have not received notification from the tax authority to that effect should in any case repeatedly review the statutory conditions required for being classified as a reliable taxpayer, which carries several advantages, and if justified, they should take further steps. If the taxpayer has not been classified as being reliable, it would be worth considering to file a complaint as soon as possible, which opportunity is available within 6 months counted from 1 May 2016” – says Dr.' János Pásztor, Head of the Tax Group of Faludi Wolf Theiss Attorneys at Law.

Some of the statutory conditions of becoming a reliable taxpayer should be subject to further interpretation and explanation. One of such criteria is the concept of tax performance, which is construed to mean the average of the total of tax obligations of the taxpayer for the given year within the statutory limitation period, calculated on a gross basis, increased by the relevant budgetary subsidy, tax allowance and tax exemption. When this calculation is made, in the case of VAT, the greater of the absolute values of the payable output VAT or the previously charged and deductible input VAT will be considered.

It cannot be precluded that the above definition of tax performance will cause problems in several cases, since the Act on Tax Procedures, as opposed to NGM Decree 4/2012. (II. 14.) the Ministry for National Economy on the specification of large taxpayers and the determination of taxpayers with the largest tax performance, for instance, does not specify the elements of tax performance. Moreover, the detailed rules of calculating tax performance have not been specified, either. There may be problems arising in connection with the calculation of tax performance in the case of taxpayers choosing a business year different from the calendar year; it is questionable how the values calculated for one year should be interpreted in respect of their declaration and payment obligations which have different due dates.

It should also be noted in connection with the criteria of tax audit assessments that the law specifies tax difference and not tax underpayment assessed to the detriment of the taxpayer. The amount of tax difference assessed to the detriment of the taxpayer, for example, is affected neither by the amount established in favour of the taxpayer in the same type of tax nor by considering tax losses carried forward from the previous period. All this may result in that, in extreme cases, a tax audit closed without the establishment of tax underpayment may also give rise to exclusion from reliable taxpayers. It is also questionable whether for determining reliable taxpayer classification only a tax difference determined by a final decision is considered as a tax difference established by the tax authority, and how pending judicial proceedings and their results will be considered during the classification and following the closure of judicial proceedings.

Information booklet No. 71 of the National Tax and Customs Administration on the classification of taxpayers provides some information about the above questions; however, several questions need to be further clarified. For this reason – in view of the six-month limitation period – even if the statutory conditions obtain, it is worth filing a complaint in due course even before the above issues are settled by an official opinion.

Reliable taxpayers are granted with the following major benefits:

- as from 1 January 2017, reclaimed VAT will be repaid within 45 days and, as from 1 January 2018, within 30 days by the tax authority;
- the deadline of tax audits for them is no more than 180 days (except when the taxpayer does not comply with the obligation to cooperate and deliver documents);
- in the event of non-compliance with their obligation to report, declare or provide data, the national tax and customs authority first calls on the taxpayer to meet its obligations and correct the mistakes, along with setting a deadline;
- a default penalty may only be imposed if the notice brings no result and the amount of such penalty is 50% of the upper limit of the default penalty that may be imposed under the general rules;
- the amount of a tax penalty is 50% of the upper limit of the tax penalty that may be imposed under the general rules;
- automatic instalment payment is available for tax liabilities ranging from HUF 10,000 to HUF 500,000.

ABOUT WOLF THEISS

Founded in 1957, Wolf Theiss is one of the leading European law firms in Central, Eastern and South-Eastern Europe with a focus on international business law. With 340 lawyers in 13 offices located in Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Serbia, Slovakia, Slovenia and Ukraine, Wolf Theiss represents local and international industrial, trade and service companies, as well as banks and insurance companies. Combining law and business, Wolf Theiss develops comprehensive and constructive solutions on the basis of legal, fiscal and business know-how.

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