

NEW RETAIL SPECIAL TAX - FOREIGN ONLINE STORES ARE ALSO AFFECTED

Government Decree No. 109/2020. (IV. 14.) (hereinafter referred to as Government Decree or Decree) introduced a **new special retail tax** for replenishing the Epidemiological Fund, but this tax **applies** not only to retailers, but also **to foreign companies with only Hungarian tax (VAT) registration.**

WHO IS SUBJECT TO THE GOVERNMENT DECREE?

According to the Decree, the tax liability is on the one hand applies to **tax resident persons and organizations engaged in retail trade activities** – classified in TEÁOR¹ statistical sectors under N°45.1 (excluding wholesale of motor vehicles and trailers), N°45.32, N°45.40 (excluding repair and wholesale of motorcycles) and from N°47.1 to 47.9 – in a commercial capacity, **where the buyer MAY also be a private individual.**

As can be seen, in addition to the classic retailers, this wording could **theoretically include among the taxable persons** those **wholesalers**, who are also willing to sell to private individuals. This can be done on a permanent or occasional basis, such as in the case of the ongoing “open days” promotion of Metro stores, where the essential condition that **a potential buyer can also be an individual** is met. According to the explanation given by KSH² to the TEÁOR codes, **the nature of the buyer is decisive** in the classification into the wholesale and retail sector. In retail, **sales are mainly made to the general public.** It is obvious that in case a wholesaler also sells occasionally to private individuals in significantly smaller volumes, it will not be reclassified as a retailer. In the same way, the retailer from whom companies buy furniture, appliances, etc. will not become on this basis a wholesaler either. The aim of the legislation is to tax retail, but at the same

¹ Unified Sectoral Classification of Activities

² Hungarian Central Statistical Office



time **an anomaly of interpretation arises as to what is meant by retail, whether the scope of taxable persons should be interpreted in a narrower or broader sense:** the actual sales transactions must be classified one by one or the essential nature of the activity is decisive, and wholesalers may not be taxable persons. In our view, the latter is in line with the purpose of the legislation.

Domestic sales activities of non-resident organizations and persons, other than through a branch, are also covered by the Decree. From the wording of the legislation it can be concluded that this group of taxable persons **is not subject to the condition that their activity corresponds to the retail activity** according to the above TEÁOR'08 (statistical) codes, **or that they should also sell to private individuals**; in their case, the Decree only requires that "the sale of a product delivered to its customer domestically not through a branch" be fulfilled. A literal interpretation of **this provision would also make cross-border B2B transactions subject to the special retail tax, which is clearly not in line with the original intention of the legislator.** It is likely that the legislator will soon correct this anomaly either by amendment or interpretation.

Of the non-resident organizations and individuals, typically **online sellers** (e.g. Amazon) will have to reckon with the special tax. Consider, for example, the **distance selling rules** of the VAT Act (in Sections 29-30.§), according to which **a foreign seller** in Hungary above the € 35,000 threshold **must register with the Hungarian Tax Authority (HTA)**, invoice under a Hungarian VAT number with Hungarian VAT rates, prepare a declaration thereof; thus **it is very easy to identify the circle of foreign taxable persons/entities** by the Hungarian Tax Authority.

TAX BASE, TAX RATE, TAX AMOUNT

It is important to note, first of all, that this is a temporary tax, so the special retail **tax base** is the following: **the total net turnover of the tax year, in which any day is included** from the period starting on the date of entry into force of the Decree (1st May 2020) to the end date **of the state of danger period.** For example, where FY2020 is the same as the calendar year, the tax base is the total sales revenue of FY2020 from the taxable activity. As another example, in case of a business



year beginning on 1st June 2020 – provided that the state of danger period does not end by this date – the sales revenue from taxable activities for the entire business year from 1st June 2020 to 31st May 2021 is also included in the tax base.

Concerning the tax base, further important provisions are that **it includes all revenue from sales-related services invoiced to the suppliers of goods**. Such is the case with the so-called shelf-money regularly requested by large retail stores or advertising fees for display in a newspaper, website, etc. In addition, the tax base also includes **the amount of the rebate** granted by the suppliers.

Progressive tax rates were implemented:

Up to HUF 500 million tax base	0%*
HUF 500 million < tax base portion ≤ HUF 30 billion	0,1%
HUF 30 billion < tax base portion ≤ HUF 100 billion	0,4%
HUF 100 billion < tax base portion	2,5%

** No tax return is required up to this amount.*

An important provision to prevent tax evasion is **to aggregate the turnover of affiliated companies in which the affiliated business relationship was established by a complete or partial division after the promulgation of the Decree (14th April 2020)** or, if a legal entity engaged in a retail activity on the date of promulgation of the Decree, **transferred or made available its assets** enabling that activity to another related undertaking **after the promulgation of the Decree**. However, the aggregation need not be applied if the taxable person proves that these transactions did not take place due to the circumvention of the special retail tax liability but were purely based on economic reasons.

Due to the **periodic nature of the tax**, to obtain the amount of tax liability the amount calculated applying the above **must be multiplied by the ratio** of the number of days from the date of entry into force of the Decree (01.05.2020) to the date of the end of the state of danger period (numerator), to the number of calendar days of the entire tax year (denominator). For



example, if the state of danger period ended on 1st July 2020, a taxpayer with the same business year as the calendar year will have to quantify the tax liability based on a ratio of 61/365.

Calculation of the tax liability (HUF)	State of danger period ended on 01/07/2020
Sales revenue from retail activity	594 000 000 000
Revenue from sales-related services invoiced to suppliers	2 000 000 000
Amount of rebate received from suppliers	4 000 000 000
Tax base	600 000 000 000
Tax base in the 1st revenue band (up to HUF 500 million)	500 000 000
<i>Calculated tax up to HUF 500 million tax base (0%)</i>	-
Tax base in the 2nd revenue band (up to HUF 30 billion)	29 500 000 000
<i>Calculated tax up to HUF 30 billion (0.1%)</i>	29 500 000
Tax base in the 3rd revenue band (up to HUF 100 billion)	70 000 000 000
<i>Calculated tax up to HUF 100 billion part of the tax base (0.4%)</i>	280 000 000
Tax base in the 4th revenue band (HUF 100 billion <)	500 000 000 000
<i>Calculated tax over HUF 100 billion tax base (2.5%)</i>	12 500 000 000
Total calculated tax liability:	2 140 765 753

TAX ADVANCE

Monthly tax advance must also be paid for the special retail tax; and **the first tax advance must be declared and paid by 31st May 2020.**

The monthly amount of the tax advance shall be calculated from **the net sales revenue** from the activities covered by the Decree **of the last tax year closed by annual financial statements** before the entry into force of the Decree on 1st May 2020. It is very important that **this does not mean data for the tax year 2019, if the approved annual report for this year is not yet available by 1st May 2020.** In this case, the annual report for the tax year 2018 must be used as a basis.

Multiplying the net sales revenue of the last closed tax year (with regard to the rules of aggregation in case of affiliated companies) by the tax rates of each relevant band, we obtain the amount of



which 1 / 12th will be the monthly tax advance liability. If the taxable person's **last closed tax year includes less than 12 months**, the net sales revenue must be **annualized**, and if the taxable person has **not yet closed a tax year (newly established)** by the entry into force of the Decree, its tax advance liability will be 1/12th of the **expected tax amount** for the tax year.

The tax advance **must be paid for each month, until the last day of the month**, of which at **least one day falls to the state of dander period**.

It is very important that **the legislation also provides for the possibility of reducing the tax advance liability: if the net sales revenue** – derived from the (retail) activity defined in the Decree – **of the month preceding** the due date of the monthly tax advance **does not reach 60% of the net sales revenue** from the same activity **in the same month of the previous year**. The tax advance reduction may be requested in proportion to the decrease in sales revenue **by submitting an application to the HTA**.

If **the amount of tax advances paid exceeds the amount of the actual tax liability**, the taxpayer may **reclaim** the difference **from the date of submission of the tax return** by applying the general tax refund rules of the Act on Rules of Taxation.

Taxable persons **who are not liable to pay tax** (up to HUF 500 million of taxable net sales revenue) **do not have to submit either tax or tax advance returns**.

Examples of tax advance calculation

Tax advance calculation (HUF)	Company A	Company B	Company C	Company D
Last tax year closed with financial statements	01/01/2019-31/12/2019	01/09/2018-31/08/2019	01/07/2019-31/12/2019*	NO**
Tax base: net sales revenue of the last closed tax year according to Section 2.§ of the Decree / annualized sales revenue * / expected tax amount for the tax year**	600 000 000 000	300 000 000 000	40 000 000 000	2 000 000 000
Tax base in the 1 st revenue band (up to HUF 500 million)	500 000 000	500 000 000	500 000 000	500 000 000
<i>Calculated tax up to HUF 500 million tax base (0%)</i>	-	-	-	-
Tax base in the 2 nd revenue band (up to HUF 30 billion)	29 500 000 000	29 500 000 000	29 500 000 000	1 500 000 000
<i>Calculated tax up to HUF 30 billion (0.1%)</i>	29 500 000	29 500 000	29 500 000	1 500 000
Tax base in the 3 rd revenue band (up to HUF 100 billion)	70 000 000 000	70 000 000 000	10 000 000 000	-
<i>Calculated tax up to HUF 100 billion part of the tax base (0.4%)</i>	280 000 000	280 000 000	40 000 000	-
Tax base in the 4 th revenue band (HUF 100 billion <)	500 000 000 000	200 000 000 000	-	-
<i>Calculated tax over HUF 100 billion tax base (2.5%)</i>	12 500 000 000	5 000 000 000	-	-
Calculated total tax liability:	12 809 500 000	5 309 500 000	69 500 000	1 500 000
Monthly tax advance liability (1/12th part)	1 067 458 333	442 458 333	5 791 667	125 000

DECLARATION

The tax must be assessed and declared by the taxpayer **by the 30th day of the year following the tax year including the end of the state of danger period**, or if the tax year ends during the state of danger period, **by the 30th day after the end of this period** on the form provided by the HTA.

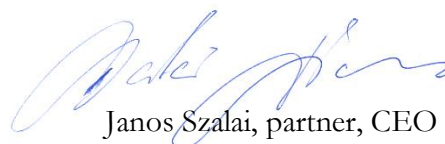
Example:

Tax year	End of state of danger period	Declaration deadline
01/01/2020 – 31/12/2020	01/06/2020	30/01/2021
01/09/2019 – 31/08/2020	01/09/2020	01/10/2020

Should you have any questions about the above, feel free to contact us!

21st April 2020

Sincerely,



Janos Szalai, partner, CEO

and the PMX Team

Dear Reader!

All {pmx} publications are compiled with the utmost care and attention and with the knowledge and practical experience we have gained over the past 25 years. And precisely this knowledge 'forces' us to claim that, from a tax point of view, there is no two cases that could be identical, and often a seemingly insignificant difference can fundamentally affect the tax liability of a transaction, for instance. With this in mind, we ask you to consider very carefully if you make your business decisions based solely on the content included in this publication without consulting with your tax expert regarding the specific case. We emphasize that in all cases experts' opinion on the specific case shall be required, because a well-founded, responsible decision can only be made in the possession of this.

Due to the above, we shall not be held liable for any damage resulting from the improper use of this publication.

Thank you for your understanding!