Key Rules on Advertisement Tax
2017

Regulations of the *Act XXII of 2014 on Advertisement Tax [AT Act]* is significantly changed from 1 July 2017. This information booklet summarizes the rules of the Advertisenent Tax amended by the *Act XLVII of 2017 [Modification Act]*.

1. Terms relevant for the purposes of tax liability

Pursuant to Paragraph (1) of Section 2 of the AT Act, the quid pro quo publication of an advertisement

a) in media service,
b) in press products mostly in the Hungarian language, published or distributed in Hungary,
c) on outdoor advertising media as specified by the Advertising Act,
d) on any vehicle, printed material or real estate,
e) on the Internet, mostly in the Hungarian language or on an Internet web site mostly in the Hungarian language

and – with certain exceptions – orders for the publication of such advertisement, shall be subject to tax.

According to the rules in force from 26 May 2017, only quid pro quo publication of advertisement on specific channels is considered taxable. The publication of the advertisement for its own purpose, that is, if the taxpayer publishes advertisement for his own product, goods, services, activities, names and releases, does not give rise liability to advertisement tax. Taxpayers who were only taxpayers for the sole purpose of publishing their own advertisements, that is, their tax base exceeding HUF 100 million was only incurred directly as a result of the publishing of their own advertisement, are not taxable persons as advertisement under the new rules.

Advertisement shall mean any commercial advertisement under *Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities [Advertising Act]* and any commercial communication under *Act CLXXXV of 2010 on Media Services and Mass Media [Media Act]*.

Commercial advertising shall mean any form of representation or announcement broadcast by a company in order to promote the supply of goods of a fungible nature that are capable of being delivered – including money, securities and financial instruments, and natural resources that can be utilized as capital goods – or services, including immovable property, rights and obligations, or in connection with this objective, the representation of the name, trade mark or the promotion of the activities or products of the company [Point d) of Section 3 of the Advertising Act].

Commercial communication shall mean any media content which is designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such content accompanies or is included in the media content in return for payment or for similar consideration or for self-promotional purposes. Forms of commercial communication shall include, inter alia, advertising, sponsorship with a view to promoting the sponsor's name, trade mark, image, activities or products, teleshopping and product placement [Point 20 of Section 203 of the Media Act].

Publication of advertisements shall mean the dissemination of advertisements either to the general public or to a single recipient [Point f) of Section 3 of the Advertising Act]. Pursuant to Point 8 of Section 1 of the Advertisement Tax Act, publication of advertisements shall also mean any publication under the Advertising Act irrespective of the fact whether the place, time or way of publishing the advertisement is determined by the contract on publication of advertisements. Consequently, a taxable event shall also occur if, in an agreement aimed at the publication of advertising, the parties agree that the advertising is to be published in a pre-determined time zone of programming time, so the price paid explicitly for the special publication (as part of the publisher's net sales revenue derived from taxable activities as taxable person) also forms part of the tax base.

In order to assess whether the given advertising is published in a taxable manner for the purposes of Subsection (1) of Section 2 of the Advertisement Tax Act, it is appropriate to review the following interpretative provisions.

Media service shall mean an economic service pursued commercially on own account – performed on a regular basis under economic exposure with a view to making a profit – which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programs – in order to inform, entertain or educate – to the general public by electronic communications networks [Point 40 of Section 203 of the Media Act].

Press product shall mean the individual volumes of newspapers and other periodicals, as well as online journals and news portals, provided as an economic service under the editorial responsibility of a natural or legal person, and the principal purpose of which is the provision of content containing text and/or images – in order to inform, entertain or educate – to the general public in printed format or by electronic communications networks [Point 60 of Section 203 of the Media Act].

Outdoor advertising media shall mean any media located outside a building for the purpose of the dissemination of advertising [Point o) of Section 3 of the Advertisement Act].

Pursuant to Subsection (6) of Section 1 of the AT Act, **printed material** shall mean any printed business advertising material, catalogue, brochure or advertising poster. Having regard to the fact that this definition fails to narrow the concept of printed materials to advertising materials printed on paper only, such advertising materials may include all materials on which advertising is printed (such as T-shirts, banners, pens, badges or armbands printed for advertising purposes).

Pursuant to Subsection (3) of Section 2, publication of an advertisement **shall not be regarded as a taxable event** if carried out by a national sports association of a branch of sport or by a specialised national sports association as specified in *Act I of 2004 on Sports* in relation to

- the operation of a national sports team,
- the performance of its training duties concerning junior teams,
- the operation of an amateur tournament system.

In addition, advertisements published in relation to a sports organization, sport school or junior training foundation operated as a member of a sports association in relation to

- the performance of its training duties concerning junior teams; or
- the participation in an amateur tournament system

have also been excluded from taxable events.

As regards the cases not exempted, revenue from sponsoring may continue to be taxable income for the entity sponsored in specific cases. Such cases include the publication of the name and/or logo of the sponsor in a manner corresponding to the publication set out in Subsection (1) of Section 2 of the AT Act. This taxable event occurs if a sponsored sports association displays the sponsor's name or logo on the jerseys, racing cars or other sports equipment of athletes, or if the organisers of a sponsored event display signs or billboards containing the name or logo of the sponsors, or display the name or logo of sponsors on their announcements, posters, advertising, invitations or websites. However, if the sponsored entity fails to reveal the identity of its sponsors or reveals it only verbally (upon the presentation of prizes or when announcing the event), no advertising is published and, therefore, no taxable event occurs.

2. Rules pertaining to the publisher of an advertisement

2.1. Taxable persons

If an advertisement is published in the manners specified in Subsection (1) of Section 2 of the AT Act, taxable person shall be, irrespective of their tax residence [Subsection (1) of Section 3 of the AT Act]:

a) media content providers which qualify under the Media Act as companies established in Hungary,
b) media service providers not covered by Point a) which make available Hungarian language media content within the territory of Hungary during at least half of their daily broadcasting time,
c) publishers of press products not covered by Point a) above;
d) persons or organizations which utilize for the purpose of advertising outdoor advertising media as well as any vehicle, printed material or real property suitable for advertising,
e) in case of advertisements published on the Internet, the publisher of the advertisement (a person or organisation entitled to dispose of the advertising space).

In case of advertisements published on the Internet, those persons shall be qualified as publisher (taxable person) who/which have the right to place content, that is, who/which decide on the utilization of the Internet for advertising purposes.

Media content provider shall mean any media service provider and the provider of any media content [Point 43 of Section 203 of the Taxation Act].

Media service provider shall mean the natural or legal person who has editorial responsibility for the choice of the content of the media service [Point 40 of Section 203 of the Media Act] and determines the manner in which it is organized [Point 41 of Section 203 of the Media Act].

2.2. Tax base

The tax base of the tax payable by the publisher of an advertisement shall be the **net sales revenue originating from the taxable activities in the tax year** [Subsection (1) of Section 4 of the AT Act]. For taxable persons

a) subject to *Act C of 2000 on accounting [Accounting Act]*, the net sales revenue from sales defined in the Accounting Act,

b) covered by Point a) but compiling their individual report in accordance with the IFRS specified in Point 2 of Subsection (10) of Section 3 of the Accounting Act, the net sales revenue defined in Section 40/C of *Act C of 1990 on Local Taxes [LT Act]*,
c) subject to Act CXVII of 1995 on personal income tax [PIT Act], the revenue excluding value added tax under the PIT Act,
d) not subject to either the Accounting Act or the PIT Act (for example, taxpayers of simplified entrepreneurial tax who keep income records, small taxpayers paying itemized lump-sum tax, businesses established abroad with no branch in Hungary) the revenue that corresponds to the net sales revenue under the Accounting Act shall be taken into account as net sales revenue.

The AT defines a **special tax base increasing item** as well if the advertisement is published via an advertising agency [Point 11 of Section 1 of the AT Act]. Subsection (1) of Section 4 prescribes that the net sales revenue shall be increased by the difference of the net sales revenue originating from the services under any agreement concluded between an advertising agency and a customer on publishing advertisements in the framework of the taxable person's media content services and the consideration payable to the taxable person by the advertising agency in connection with such transaction.

This provision means increasing the net sales revenue derived from taxable activities by the advertising sales agency's margin or commission. The increasing item shall be applied if the advertising agency is a person or organisation considered as a **related party under the Accounting Act**[1] related to the taxpayer (the publisher of the advertisement) which is entitled to conclude a contract for the publication of an advertisement within the taxable person's media content services on the grounds of their contractual relationship with the taxpayer. If no such relationship exists between the parties, the increasing item shall not be applied.

2.3. Tax rate

Publishers of advertisements shall be liable to tax rates according to the rules were effective till 30 June 2017

- 0% on the portion of the tax base falling below HUF 100 million,
- 5.3 % on the portion of the tax base exceeding HUF 100 million.

The rate of the tax according to the rules are effective from 1 July 2017:

- between 1 January 2017 and 30 June 2017 is 0% of the tax base,
- from 1 July 2017 is 7.5% of the tax base.

According to the new rules, HUF 100 million from tax yearly net sales revenue originating from taxable activity of the advertisement publishing taxable person is exempt from tax [Paragraph (3) of Section 5 of the AT Act]. This exemption is qualified as small amount (de minimis) subsidy which is available in accordance with the rules of *the Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid* [Paragraph (4) of Section 5 of the AT Act]. Accordingly, in the 3 consecutive tax years, the aggregate amount of de minimis subsidies within the tax system and out of the tax system, in general

[1] Point 8 of Section 3 (2) of the Accounting Act

case, can not exceed EUR 200 000. This limit for the three tax years is not to be taken into account for taxable person, but for *one and the same enterprise*[2], under the Regulation.

Advertisement publishers, who, for some reason (such as exceeding the de minimis limit) do not have the right to subsidize, are obliged to pay the advertisement tax after their full tax base.

Consequently, advertisement publishers whose net sales revenue originating from taxable activity does not exceed HUF 100 million and use a tax exemption qualifying as de minimis subsidy do not yet have any tax liability. If the advertisement publisher taxable person's tax-base exceeds the amount of HUF 100 million, but wishes to avail himself/herself of the tax exemption, which is considered as a de minimis subsidy, then the advertisement tax is payable only after the tax-base part over the amount of HUF 100 million.

In view of the fact that the exemption rule applies to the tax yearly net sales revenue originating from taxable activity of value up to HUF 100 million, this also implies that after the total amount of the special tax base, the advertisement tax has to be paid.

> ***Example:*** *The net sales revenue of 2017 originating from the advertisement publisher's taxable activity is HUF 80 million and the special tax-base rising item is HUF 5 million. In this case, if the taxpayer makes use of the tax exemption, which is considered to be a de minimis subsidy, the tax yearly net sales revenue amount of HUF 80 million is exempt from tax, while the total amount of HUF 5 million is a taxable amount because exemption rule according to the paragraph (3) of Section 5 of the AT Act does not cover this part of the tax-base. An advertisement tax liability must be established after the amount of HUF 5 million tax-base of the advertisement publisher.*

Publishers of advertisements shall be liable to progressive tax [Subsection (1) of Section 5 of the AT Act]. The tax brackets and the tax rates are as follows: -

- 0% after the portion of the tax base falling below HUF 100 million,
- 5,3 % after the portion of the tax base exceeding HUF 100 million.

2.4. The tax and tax advance assessment, declaration, payment obligation and the tax supplement liability for year 2017

Advertisement tax isa tax to be settled on an annual basis for publishers of advertising, which is to be assessed, declared and paid in each tax year. Publishers shall assess and declare their tax liability – by way of self-assessment – by filing Form No. 1794 provided for this purpose to the state tax authority by the last day of the fifth month of the year following the tax year, normally by 31 May 2018 [Subsection (1) of Section 7 of the AT Act]. The difference between the tax advance paid, the top-up amount and the annual tax amount shall be paid by the last day of the fifth month following the tax year, and any surplus payments made may be reclaimed after that date [Subsection (7) of Section 7 of the AT Act].

As a general rule, during the tax year the advertisement publisher shall be liable to assess, declare and pay advance tax and advance tax supplement, however, taxable persons not liable to pay taxes **are not obliged to declare taxes, advances tax and advance tax supplement**

[2] Paragraph (2) of Article 2 of the Commission Regulation 1407/2013/EU

[Paragraph (6) of Section 7 of the AT Act]. This means that these taxpayers **shall not file nil tax returns.** If, for example, a taxpayer publishes quid pro quo advertisement, but the tax yearly net sales revenue originating from such publication does exceed the HUF 100 million, and uses the tax exemption which is qualified as a de minimis subsidy, then, in the lack of tax liability, s/he is not required to file Form No. 1794.

Pursuant to Subsection (8) of Section 7 of the AT Act, taxable persons applying a business year different from the calendar year shall assess, declare and fulfil their tax and tax advance payment obligations in accordance with the rules in effect on the first day of the business year. This general rule is overwritten by Paragraph (2) of Section 8/A, and Section 9 of the AT Act, which provisions must be applied by all taxable persons, irrespective of whether his/her tax year coincides or does not coincide with the calendar year, referring to the tax years fixed in the relevant rules.

2.4.1. Tax liability for year 2017

The **tax amount of tax year containing 1 July 2017** shall be the amount computed by applying the progressive tax rates considering

- the taxable person's annual net sales revenue from his taxable activities in year 2017,
- increased by the difference between the net sales revenue in year 2017 deriving from services provided under a contract concluded between the advertising agency and its client for the publication of advertisements within the taxable person's media content services, and the consideration payable by the advertising sales agency to the taxpayer in connection with this transaction in year 2017,

as the sum of tax base calculated with the assistance of tax rates to be applied [Paragraph (1) of Section 4 of the AT Act].

According to Section 9 of the AT Act, which is effective from 1 July 2017, the advertisement publisher must divide the tax base the 0% tax rate should be scaled to such a proportion of the tax base

- as much proportion of the calendar days of the tax year lasting till 30 June 2017 represents in the calendar days of the tax year as a whole, or
- as much tax base arose in the period lasting till 30 June 2017 on the basis of the closing of accounts made for the date 30 June 2017.

The tax base applicable to the period after 30 June 2017 shall, in any event, be subject to a rate of 7.5%.

Therefore, the advertisement publisher can opt for a timeshare or intermediate balance-based share. In the case of continuous operation, when selecting the time proportionate share, the tax base must be scaled to the 0% tax rate for 181/365 and 7.5% for the 184/365.

> ***Example:*** *a permanently operating taxpayer accounting for calendar year in the tax year 2017 realizes as net sales revevue income an amount of HUF 140 million from its taxable activity (no special increase item has to be counted). The taxpayer makes use the tax exemption, which is considered as a de minimis subsidy. The taxpayer assesses his/her 2017 tax with the method of time-share proportionating as follows: [(HUF 140 million – HUF 100 million) x 181/365 x 0%] + [(HUF 140 million – HUF 100 million) x 184/365 x 7.5 %] = 0 + HUF 1.51 million = HUF 1.51 million.*

Rules entered into force from 1 July 2017 of the AT Act do not contain such a provision, according to which, if the tax year is shorter than 12 months for any reason, then during the

assessment of the payable tax the tax base should be annualized and then, by taking the annualization, the tax liability should be day proportionated. If, for instance, a taxpayer, whose tax year corresponds to the calendar year, begins his/her taxable activity after 1 July 2017, so the 7.5 % tax rate must be proportionated onto his/her sales revenue achieved actually till the end of the tax year, which lasts till 31 December 2017.

2.4.2. Tax advance liability for year 2017

The amount of tax advance in 2017 shall be

- the amount calculated in accordance with Section 5 on the basis of the tax base originating from all taxable activities carried out in the tax year preceding the tax year concerned, if the duration of the taxable person's previous tax year was 12 months,
- the amount calculated in accordance with Section 5 on the basis of a calculated 12-months tax base originating from all taxable activities carried out in the tax year preceding the tax year concerned, if the duration of the taxable person's previous tax year was shorter than 12 months,
- the anticipated tax amount for the current tax year, if the taxable person commenced its taxable activity in the current tax year without any legal predecessor,
- a pro rata tax amount calculated by the tax rate laid down in Section 5 on the basis of the tax base originating from the legal predecessor's taxable activities until the date of reorganization, merger or de-merger in the current tax year which is equal to the proportionate amount obtained by the taxable person established by the reorganization, merger or de-merger (including the remaining company in case of a spin-off) from the legal predecessor company's assets, if the taxpayer was established by reorganization, merger or de-merger [Subsection (3) of Section 7 of the AT Act].

Net sales revenue and a special increasing item achieved in the last tax year beginning in 2016, arising from the taxable activity, if necessary annualized, comprise of sum of the advance tax due in the tax year beginning in 2017 and including the entry into force of Modification Act [Paragraph (2) of Section 8/A of the AT Act, which is effective from 26 May 2017]. Costs incurred in 2016 in connection with the publication of advertisement for own purpose should therefore not be taken into account when calculating the 2017 advance tax's base.
In the event that the advertisement publisher assesses and declares his/her tax liability before 1 July 2017, the advance tax must be determined by taking into account the 0% and 5.3% tax rates. If the reporting obligation is due after 30 June 2017, the publisher must determine the advance tax based on the 7.5% tax rate.

In principle, the deadline for declaring tax advance shall be the last day of the fifth month of the tax year, if the tax year coincides with the calendar year, that is 31 May 2017. Taxable persons commencing their taxable activity without any legal predecessors and taxpayers concerned by reorganization, merger or de-merger shall declare tax advance for the current tax year within 15 days upon the commencement of the taxable activity [Subsection (2) of Section 7 of the AT Act].

Publishers of advertising which operate continuously and are obligated to file a settlement return for tax year 2016 shall fulfil their tax advance declaration obligation for tax year 2017 on Form No. 1694 (simultaneously with preparing the settlement for tax year 2016). Taxable persons commencing their taxable activity without any legal predecessors and taxpayers concerned by reorganization, merger or de-merger shall declare their tax advance liability for tax year 2017 on Form No. 1794.

The tax advances shall be paid in two equal instalments, until the 20th day of the seventh month (20 July 2017) and by the 20th day of the ninth month of the tax year (20 October 2017); in case of taxpayers commencing their taxable activity without any legal predecessors and taxable persons concerned by reorganization, merger or de-merger, the tax advance shall be due within 15 days from the date of commencement of activities and until the 20th day of the last month of the tax year subsection [Subsection (4) of Section 7 of the AT Act].

2.4.3. Advance supplement for the year 2017

Pursuant to Subsection (5) of Section 7 of the AT Act, taxpayers subject to advertisement tax (thus all taxable persons publishing advertisements) shall supplement the tax advance. Taxpayers liable to tax advance supplement shall submit a tax return (Form No. 1794) on the difference between the expected tax liability and the advances already paid for the tax year, and pay that difference, by the 20th day of the last month in the tax year.

2.4.4. Reducing the advance tax

If the amount of the taxable person's tax liability for the given year (2017) as calculated by the taxpayer will be less than the tax advance declared by them based on the net sales revenue of the previous period – in general case tax year 2016 – or even zero and they will pay less or no advertisement tax based on the figures on their taxable activities in 2017, they may request a reduction of their tax advance – prior to the due date of advance payment – pursuant to the provisions of Subsection (2) of Section 42 of *Act XCII of 2003 on the Rules of Taxation.* According to that provision, taxpayers may request a modification of the tax advance from the tax authority if they pay the advance on the basis of figures for the previous period (year, quarter, half-year) and their calculations indicate that their tax liability will remain below the amount of the tax advance payable on the basis of figures for the previous period.

2.5. Refund of the advertisement tax declared for the tax years ended till 30 June 2017

According to the Paragraph (1) of Section 8 of the AT Act, which is effective from 1 July 2017, the tax declared and paid by advertisement publishers for tax years ended till 30 June 2017 shall be considered as an over-payment under the ART, the refund of which is governed by the rules of ART. Based on the foregoing, all advertisement tax payments made by advertisement publishers are considered to be overpayments, which means the tax declared and paid for the tax years 2014, 2015 and 2016 (in case of taxpayers applying different business years and the so-called transitional tax year), the refund of which or the transfer to another tax type of which could be requested from the competent county tax and customs directorate on the Form No. 1717. The self-audit of the earlier tax returns is therefore not a condition for refund of the advertisement tax, which has been declared and paid for earlier tax years.

Advertisement publishers should also pay attention, inter alia, to Paragraph (2) to (6) of Section 151 of the ART, which states that the state tax and customs authority may, upon review, withhold the budgetary subsidy (tax claim, tax refund) due to the taxpayer up to the aggregate amount of delinquent taxes and outstanding public dues enforced as taxes that are specified in the inquiry of a municipal tax authority and which are due and payable to municipal tax authorities, as a consequence of which such liabilities shall be considered paid. On the withholding, the taxpayer will be notified by order of the state tax and customs authority. Further condition for the refund is that the taxpayer fulfills his/her obligation to

submit a declaration by the date of filing of the application [Paragraph (6) of Section 43 of the ART]. According to Paragraph (2) of Section 8 of the AT Act, the tax authority informs the taxable persons concerned about the possibility and conditions of the refund.

The Paragraph (1) of Section 8/A of the AT Act stipulates that the tax declared but not paid by the advertisement publishers for the tax year ended till 30 June 2017 is not needed to be paid. If, therefore, the advertisement publisher's tax payable for the tax year 2016 would arise until 31 May 2017, in addition to the amount of advances and the advance tax supplement paid in the course of the year, this tax payable is not needed to be paid, according to the quoted provision of the AT Act. However, this provision does not exempt publishers from fulfilling the obligation of submitting tax return, so the accounting declaration Form No.1694 must be submitted.

2.6. The state tax authority's register of publishers of advertisements

The state tax authority shall maintain separate records containing **the name (company name) and tax number of all taxable persons publishing advertisements** [Subsection (1) of Section 3 of the AT Act], and shall publish those records on its website [Subsection (1) of Section 7/A of the AT Act].

Publishers – irrespective of their residence – shall be **registered** by the state tax authority upon request if

- they fulfilled their tax and tax advance declaration obligations as well as their tax and tax advance payment obligations in due time; or
- they submit a statement to the state tax authority that they have no tax payment obligation in the tax year concerned ("no-debt statement").

In the latter case, the state tax authority may conduct **an audit** to verify the statement before registering the taxpayer.

The state tax authority shall **remove** the taxable person from the register published on its website

- upon the taxable person's request,
- if the taxable person fails to comply with its declaration obligation or fails to meet its tax payment obligation in full,
- contrary to the taxable person's "zero liability statement", the taxable person is liable to pay tax in the tax year unless the taxable person fulfils such obligation in accordance with the provisions hereof,
- at the end of the tax year, in case of taxable persons filing a "zero liability statement",
- if the taxable person is terminated,
- if the taxable person becomes subject to liquidation, voluntary dissolution or compulsory deregistration procedure,
- if the taxable person's tax debt calculated on a net basis exceeds HUF 100,000 on the first day of any calendar month.

Any change occurring in the data shall be entered into the register by the state tax authority on the day it becomes aware of it, and shall publish such change on its website on the first day of the month following the entry (the register id updated on a monthly basis).

The request for registration may be submitted **in a hard copy, with no required format**, to the competent tax directorate of first instance; the procedure is free of duty.

2.7. Rules pertaining to publishers of advertisements not complying with their reporting or statement obligation

The publisher of an advertisement [taxable person as defined in Section 3(1) of the AT Act] shall report on a form introduced by the tax authority for this purpose within 15 days from starting its publication activity. Reporting obligations shall not apply to:

- those taxable persons which are registered by the state tax authority as a taxable person subject to some tax type (for example: foreign taxable persons kept on file as VAT-registered),
- individuals who do not qualify as private entrepreneurs under the Personal Income Tax Act (Section 7/B(1) of the AT Act].

Having regard to the fact that resident taxable persons are registered by the state tax authority as taxable persons subject to some tax type from the issue of the tax number, the above rule of the AT Act shall be applied to those non-resident publishers engaging in activities subject to advertisement tax which previously had not been reported to the state tax authority. The rule regarding reporting obligation is irrespective of the fact whether the given publisher has an actual obligation to pay advertisement tax or not (whether its tax base exceeds 100 million forints). If the non-resident person implements any of the conclusions of fact subject to advertisement tax as defined in Section 2 (1) of the AT Act, then it shall report to the tax authority within the mentioned deadline. In 2017, form 17T201 can be used for reporting.

If the publisher does not fulfil its reporting obligation, the state tax authority – in addition to request the publisher to fulfil the obligation – imposes a default penalty amounting to 10 million forints for the first time, in all other cases it imposes an amount three times the default penalty previously imposed. The tax authority shall assess the penalty daily in a resolution. The resolution is valid and enforceable with the communication and it may be subject to judicial review. If the publisher complies with its reporting obligation for the first time when the tax authority requests it to do so, the amount of the imposed penalty may be reduced without restriction [Section 7 (2)-(5) of the AT Act].

Section 7/C of the AT Act effective from 1 January 2017 includes the rules for those publishers of advertisement [taxable persons as per Section 3(1) of the AT Act] which do not comply with their statement obligation and the content elements of these rules are the following.
If the publisher does not fulfil its statement obligation as per Paragraph (3) of Section 3 of the AT Act[3] for the client ordering the publication of advertisements and the client reports this fact – according to Point b) of Section 2 (2) of the AT Act – to the state tax authority, then the state tax authority requests the publisher to comply with the statement obligation. In this case the publisher shall make the statement – unlike general rules – to the state tax authority. The state tax authority shall notify the publisher that if it does not file the statement within 8 days from the receipt of the request, it shall pay a default penalty amounting to 500 thousands forints.
If the publisher fails to fulfil its statement obligation for the same client, then the state tax authority will impose a default penalty amounting to 10 million forints. In the case of any

[3] Point 3.1. includes the content of the statement obligation as well as the detailed rules.

additional failures regarding the compliance with the statement obligation for the same client, the state tax authority will impose a default penalty in an amount which three times larger than the default penalty imposed previously.
The resolution(s) of the state tax authority regarding the imposition of default penalty is (are) also valid and enforceable with the communication. The resolution(s) may be subject to judicial review.
Those included in Section 7/C of the AT Act may be applied irrespective of residence, that is, a penalty with accumulating amount may be imposed also on resident and non-resident taxable persons. However, the rules under Section 7/C of the AT Act cannot be applied if the publisher

- is included in the records of publishers kept by the state tax authority (in this case the publisher does not have statement obligation by the operation of a statute),
- is an individual who does not qualify as a private entrepreneur according to the Personal Income Tax Act.

Due to the non-fulfilment of the reporting obligation (Section 7/B of the AT Act) and the failure to comply with the statement obligation (Section 7/C of the AT Act) a default penalty amounting to not more than 1 billion forints may be imposed on the same taxable person by the state tax authority (Section 7/D of the AT Act).

2.8. Rules pertaining to publishers not complying with the tax reporting obligation (the presumptive tax)

If the publisher of an advertisement [taxable person as defined in Section 3(1) of the AT Act] has failed to comply with its obligation to file the tax return, then the state tax authority assesses a presumptive tax amounting to 3 billion forints for the presumptive tax year equivalent to the previous calendar year. The publisher may present proof to the contrary against those assessed in the resolution within 30 days from the communication of the resolution assessing the presumptive tax. The presentation of proof to the contrary shall be made within the peremptory deadline. If the taxable person does not present proof to the contrary, the resolution becomes valid and enforceable on the day following the expiry of deadline open for the presentation of proof and it may not be subject to judicial review. If the taxable person presents proof to the contrary, then the state tax authority withdraws its resolution assessing the presumptive tax and it assesses the tax in a new resolution which becomes valid and enforceable with the communication. The resolution may be subject to judicial review [Section 7/E (1)-(3) of the AT Act].

3. Rules pertaining to clients ordering the publication of advertisements

3.1. Tax liability and the cases of exemption

In addition to publishing advertisements – pursuant tot Subsection (2) of Section 2– ordering the publication of advertisements is also liable to tax, with the exception of any of the cases below:

a) the client is a private individual not deemed to be a private entrepreneur under the PIT Act;
b) the client is not a private individual or is deemed to be a private entrepreneur under the PIT Act but the publisher of the advertisement made a declaration to the client that
   - the publisher will fulfil his obligation to declare and pay taxes, or
   - there is no tax liability on the publication of the advertisement during the tax year;
c) the client

- requested the publisher to issue the statement specified above and can credibly demonstrate this fact, and
- did not receive the statement requested within 10 working days from receipt of the invoice or accounting document for publishing the advertisement, and
- notified the state tax authority of the fact that the statements was requested, the name of the publishing person and the consideration of such publication;

at the time of making the order, the publisher is included in the register published on the website of the state tax authority.

The publisher of the advertisement shall make the statement described in paragraph b) on the invoice or accounting document or in some other official document (in particular, the contract for publication of advertising) containing the consideration for publication. The statement may be supplied subsequently, before the client's tax liability lapses. In this case, the client may perform a self-revision to adjust his tax liability. Issuing the statement by the publisher is a requirement set by law; therefore statements already supplied to the client may not be validly withdrawn. The statement may be made with regard to the tax base expected (calculated) for the given tax year; the contents of the statement need not be modified if, **for instance**, the publisher declared that they had no tax liability for the tax year but turns out to have a tax liability based on actual figures. **The existence of the statement in itself exempts the client from the tax liability** (once in possession of the declaration, they shall not pay any tax and shall not file a return, under this legal title).

In case of the opportunity to be exempted from tax described in paragraph c), the client may make the report to the tax authority in a hard copy, with no required format, by the 20th day of the month following the month when the invoice is received. Credible proof of the client's request for such statement may be the mail sent with advice of receipt, or a confirmation of receipt or the list of e-mails sent in the case of e-mail.

On the basis of paragraph d), the client is exempted from the tax liability also if, at the time of making the order, the publisher is included in the state tax authority's register kept of publishers of advertising, detailed information on which is found in section 2.6. In this case, the publisher is not obliged to issue a declaration [Subsection (4) of Section 3 of the AT Act].

If none of the cases of exemption referred to exists, the tax liability applies not only to the client but the publisher also has the tax liability on the net sales revenue derived from the transaction [Subsection (1) and (2) of Section 2 of the AT Act]. This means that the publisher has a tax liability on all taxable publications; in the absence of circumstances that exempt the client, both the publisher and the client shall pay their tax liability in accordance with the rules applicable to each of them. Amounts for which the publisher issued no statement may not be disregarded when determining the publisher's net sales revenue derived from taxable activities (the AT Act contains no requirements on this).

Tax liabilities for the client may only be incurred in the case of ordering the publication of the advertisement in the manners set out in Subsection (1) of Section 2 (and the publisher's obligation to issue a statement may be interpreted only this way).

3.2. Taxable persons

For the tax liability set out in Subsection (2) of Section 2 of the AT Act, the taxable person - irrespective of their tax residence - shall be the person who orders the publication of the advertisement, not including private individuals not deemed to be private entrepreneurs under

the PIT Act. The AT Act provides no definition of the client who orders the publication of the advertisement, so the person (entity) who (which) concludes a contract for publishing the advertisement with the publisher of advertisements shall be deemed to be the client.

If, for instance, an enterprise concludes a contract for the publication of an advertisement promoting its own product or service with a publisher listed in Subsection (1) of Section 3 of the AT Act., the enterprise, in the capacity of client, may be the subject of the tax liability specified in Subsection (2) of Section 2 of the AT Act, if it has no statement from the publisher in its possession. However, if an advertising agency concludes a contract with the publisher of the advertisement for the publication of an advertisement promoting the advertising agency's client, the client's product or service, the taxable person shall be the advertising agency – in the absence of a statement from the publisher – in the capacity of client.

A taxpayer may be taxable based on both Subsection (1) of Section 3 (publisher) and Subsection (2) of Section 3 (client) of the AT Act (this may happen in connection with various different transactions), in which case the taxable person shall declare the tax advance and the monthly tax liability on separate return forms.

3.3. Tax base and tax rates

Pursuant to Subsection (2) of Section 4 of the AT Act, the base for imposing the tax will be t**he part of the monthly aggregated consideration** for publication of advertisements **exceeding HUF 2.5 million** – in respect of which no conditions exist for exemption – for clients who order advertising, not including private individuals not deemed to be private entrepreneurs under the PIT Act. **Consideration** shall mean **the net amount, i.e. the amount excluding VAT.** Aggregated consideration shall mean the aggregated considerations included in invoices received in the given month based on publications of advertisements ordered after the effective date of the AT Act (the month when the invoice is received shall be the period of settlement).

The rate of the tax shall be 5% of the tax base, in accordance with the rules being effective as of 5 July, 2015 [Subsection (2) of Section 5 of the ATs Act]. The 20% tax rate shall be applicable to the period before that (between 15 August 2014 and 4 July 2015). Having regard to the fact that there was no interim rule associated with the change in the rate of the tax imposed on the client, the tax rate payable by the client for advertisements ordered in each period shall be assessed as follows. Considering that the tax liability is incurred when the advertising is ordered, when assessing the tax payable, in the absence of conditions that allow for exemptions, the client has to look at when the contract for publication of advertisements was concluded between the parties in respect of the publication of advertisements related to the invoice received in the given month. If the contract for publication of advertisements was concluded between 15 August 2014 and 4 July 2015, the client shall have a 20% tax liability if no conditions for exemption apply. If the parties concluded the contract on or after 5 July 2015, the 5% tax rate shall be applicable.

> ***Example:*** *In March 2017, the client receives four invoices to which none of the conditions for exemption apply, and the aggregated invoice consideration of the invoices is HUF 4M net. The tax base is the part of the monthly aggregated consideration in excess of HUF 2.5M, i.e. HUF 1.5M. When determining the applicable tax rate, the client has to check when the contracts for publication of advertisements were concluded for each invoice. The consideration of the first invoice is HUF 1.2M, and the client concluded the contract*

with the publisher on 20 June 2015. The aggregated consideration of the other three invoices is HUF 2.8M, and the contracts for publication of advertisements were concluded on 6 January, 11 January and 1 February 2017. In this case, the client shall apply the 20% tax rate to the first invoice of HUF 1.2M while the 5% tax rate to the other three invoices. Therefore, the 20% tax rate shall be applied to the portion of the tax base that corresponds to the ratio of HUF 1.2M to the aggregate price of HUF 4M [HUF 1.2M / HUF 4M = 0.3], while the tax for the rest of the tax base [HUF 2.8M / HUF 4M = 0.7] shall be assessed by using the 5% tax rate. The amount of tax payable by the client: [HUF 1.5M x 0.3 x 0.2] + [HUF 1.5M x 0.7 x 0.05] = HUF 90,000 + HUF 52,500 = HUF 142,500.

3.4. Procedural rules

If clients incur a tax liability, they shall declare and pay the tax on the publication of advertisements ordered by them in aggregate each month, after the 20th day of the month that follows the receipt of the invoice or accounting document on the publication of advertising. The tax shall be declared on sheet 04 of Form No. 1794.

The client need not apply the rules for the tax, tax advance and tax supplement set out in Subsections (1) to (8) of Section 7. Taxable persons not liable to pay tax **need not file zero liability tax returns** in months when the monthly aggregated consideration of the publication of advertisements does not exceed HUF 2.5 M.

3.5. Adjustments to the corporate tax base to be made by the client and the taxable person subject to corporate tax concluding contracts with the client

Pursuant to Point 16 of part "A" of Schedule No. 3 to the Corporate Tax Act, – for the purposes of Point d) of Subsection (1) of Section 8 – costs accounted for in connection with the publication of advertisements under the AT Act (in particular, the consideration payable to the publisher of advertisements or an intermediary in the publication of advertisements), but at least the standard market value for the publication of advertisements shall be deemed to be a cost or expense not incurred in the interest of business activities if the amount of such costs exceeds HUF 30 million in the entire tax year in the aggregate, and
a) the taxable person has no statement from the person liable to pay advertisement tax stating that such person performs his advertisement tax liability incurred in connection with the publication of advertisements or has no advertisement tax liability, and
b) the taxable person fails to confirm that they or the party deemed to be the client for publication of advertisements as specified in Subsection (2) of Section 3 of the AT Act, requested the person liable to pay advertisement tax to issue a declaration described in paragraph a), and
at the time of making the order, the person liable to pay advertisement tax was not included in the register published on the website of the state tax authority under Section 7/A of the AT Act.

If the annual costs accounted for in connection with the publication of advertisements do not exceed HUF 30 million in the tax year, the obligation to apply the increasing item may not even arise. No increasing item shall apply in the case of costs exceeding HUF 30 million even if the taxpayer, although not having a statement of the publisher in their possession, credibly confirms that they requested the statement but failed to receive it (this need not be reported to the state tax authority in order to be exempted from the adjustment of the corporate tax base). If, at the time of making the order, the publisher is included in the state tax authority's

register, they are not obliged to issue a statement, and the corporate taxpayer shall also be "automatically" exempted from adding the increasing item if it accounts for costs exceeding HUF 30 million.

4. Further provisions of the AT Act

The statutory tasks related to the tax will be performed by the state tax authority, and the revenue gained from the tax shall be revenue for the central budget. Procedural issues not regulated by the AT Act shall be governed by the requirements of the Taxation Act. Taxpayers subject to the Accounting Act shall account for taxes assessed under this Act charged to their pre-tax profit [Subsections (9) to (11) of Section 7 of the AT Act].

Ministry for National Economy, National Tax and Customs Administration