

INFORMATION ON TAXPAYER CLASSIFICATION  
2022

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## 1 The purpose of taxpayer classification

The purpose of taxpayer classification is to provide taxpayers settling their tax liabilities voluntarily and in time should enjoy

certain advantages, specified by law, relative to non-compliant taxpayers who are thus subject to certain stricter rules. The National Tax and Customs Administration (NTCA) reviews once a quarter whether taxpayers in the trader register, VAT registered taxpayers and taxpayer groups meet the reliable taxpayer or the risky taxpayer criteria. The rules on taxpayer classification are laid down in the act on the rules of taxation<sup>1</sup>.

## 2 The possible results of classification

A taxpayer is categorised as a reliable or a risky taxpayer as a result of the assessment. Taxpayers that cannot be assigned to either category come under the general rules of procedure.

## 3 Who is classified by the NTCA?

Classification applies to the following clients of the NTCA:

- > taxpayers in the trade registry,
- > VAT-registered taxpayers,
- > group VAT taxpayers.

A registered taxpayer is established by being definitively entered in the trade register and is listed in the trade register at the time of classification.

A VAT-registered taxpayer has no establishment in Hungary for economic activities, residence or place of stay in Hungary, is engaged in Hungary in activities subject to VAT payment, on which they are obliged to pay tax<sup>2</sup>.

Taxpayer groups are taxpayers having establishments for economic purposes in Hungary, or in lieu of that, residence or place of stay in Hungary, all of which are affiliated undertakings of one another<sup>3</sup>.

## 4 The classification process<sup>4</sup>

In the assessment of the classification criteria the NTCA

takes into account

- > its own decisions and proceedings, e.g.
  - o the establishment of tax difference,
  - o the institution of enforcement proceedings,
  - o the charging of default penalty,
  - o the cancellation of the tax number,

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<sup>1</sup> Act XCII on the Rules of Taxation (hereinafter: Taxation Act).

<sup>2</sup> Section 7 (8) f the Taxation Act.

<sup>3</sup> Section 8 (1) of Act CXXVII of 2007 on the Value Added Tax (hereinafter: VAT Act).

<sup>4</sup>Section 150 of the Taxation Act

- > along with electronic data from the Court of Registration, e.g.
  - o the date of the commencement of the company's operation,
  - o bankruptcy proceeding,
  - o winding up,
  - o liquidation,
  - o start and end of involuntary

deregistration.

- > Classification is carried out once every quarter.
- > The criteria underlying classification are assessed by the NTCA on the basis of the data as of the last day of the quarter concerned. It is also important at the same time that most criteria need to be met over several years retrospectively for a taxpayer to be categorised as a reliable one.
- > The result of the first classification is notified to the taxpayer electronically after the closure of the classification process (the last day of the month following the classification period). The classification of a taxpayer becomes effective on the first day of the month following the month in which the classification is carried out. As long as the classification of a taxpayer is not changed, the NTCA does not notify the taxpayer concerned.

## 5 The reliability criteria<sup>5</sup>

The NTCA categorises a taxpayer listed in the trade register or a VAT-registered taxpayer as reliable if it meets each of the following criteria:

1. it has been operating continuously, or has been a VAT-registered taxpayer, for at least three years,
2. the amount of the tax difference established by the NTCA as a liability of the taxpayer during the year concerned and the preceding five years does not exceed three percent of the taxpayer's tax performance for the year concerned, providing that the total amount of the tax difference established as a liability of the taxpayer must be reduced by the amount of the total tax difference established by the NTCA as an amount to the taxpayer's credit during the year concerned and the preceding five years.
3. the NTCA instituted no enforcement proceedings against the taxpayer during the year concerned and the preceding four years, not including book transfers and the exercise of the right to withhold,
4. the taxpayer is not, and has not been, under bankruptcy, liquidation or involuntary deregistration proceedings in the year concerned and the preceding five years,
5. the taxpayer owes no net tax debt exceeding five hundred thousand forints,
6. the taxpayer is not and has not been, the subject of tax number cancellation, in the year concerned and the preceding five years,
7. the amount charged by the NTCA to the taxpayer in the way of default penalty that fell due during the last two years preceding the year concerned, including excise penalties, did not exceed one percent of the taxpayer's tax performance established for the year concerned,
8. the taxpayer does not qualify as a risky taxpayer, and
9. the taxpayer's tax performance for the year concerned is a positive amount.

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<sup>5</sup> Section 153 of the Taxation Act

In the classification of a taxpayer group the various criteria are not assessed; instead, the group's classification is determined by the classifications of its members. A taxpayer group qualifies as reliable if each of its members is reliable. A taxpayer group's reliable taxpayer qualification, however cannot – since 1 January 2021 – be terminated because it has been joined by a taxpayer that does not meet the criterion of having been operated for three years.<sup>6</sup> According to this provision, if for instance a group is joined by a new member established 2.5 years ago without a legal predecessor, which meets all of the criteria for being classified as a reliable taxpayer apart from the one in Section 153 (1) a) of the Taxation Act, the group, classified as reliable, does not lose its classification as such in the classification process on account of the joining of this member. If however, the group member concerned fails to meet any other reliability criteria, the above provisions shall not apply to the group.

A public limited company shall qualify as a reliable taxpayer even if it has been operating for less than three years but it meets the rest of the criteria.<sup>7</sup>

If the taxpayer was not operating, or was not a VAT-registered taxpayer during the last five years preceding the year concerned, the NTCA examines the rest of the criteria for reliability from the beginning of operation or the date when the taxpayer became a VAT-registered taxpayer.<sup>8</sup>

## 6 Details of the reliability criteria

- > ***As specified in item 1*** a newly established taxpayer cannot be classified as a reliable one (apart from public limited companies) for the lack of having been operating continuously for 3 years. Nonetheless, the NTCA examines the statutory criteria for classification since the commencement of operation or the date of being VAT-registered taxpayer, including, for instance to see whether the taxpayer qualifies as a risky one.

In the case of a taxpayer established by legal succession the NTCA regards the duration of continuous operation as having started when the legal predecessor started its operation.

- > ***In assessing the 2nd item criterion*** the NTCA aggregates the amounts of the definitely established tax differences to the debit of the taxpayer registered in the trade register or the VAT-registered taxpayer in the year concerned and the preceding five years, i.e. the period starting on 1 January of the fifth year preceding the year concerned until the last day of the quarter preceding the classification exercise, and checks whether the resulting sum exceeds 3% of the tax performance of the taxpayer or VAT-registered taxpayer as calculated for the year concerned. Of course in calculating the tax difference the NTCA takes account of the fact that its amount might change as a result of the available legal remedy procedures, e.g. on the basis of a court decision or the supervisory authority's action.

The definitions of the terms 'tax difference' and 'tax performance' are laid down by law. The NTCA also takes these into account in checking conformity to the criterion as per *item 2*. The total amount of the tax difference established as a liability of the taxpayer must be reduced by the amount of the total tax difference established by the NTCA as an amount to the taxpayer's credit during the year concerned and the preceding five years.<sup>9</sup>

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<sup>6</sup> Section 153 (5) of the Taxation Act

<sup>7</sup> Section 153 (2) of the Taxation Act

<sup>8</sup> Section 153 (3) of the Taxation Act

<sup>9</sup> Section 153 (1) b) of the Taxation Act

The tax performance <sup>10</sup> is to be calculated as the sum of the arithmetic averages of the tax performance elements projected for a whole year (established proportionally in view of the date of the beginning of the activity). The data contained in the returns filed with the NTCA and other data in the NTCA's registries can exclusively be taken into account in the calculation of the tax performance elements.

Different rules had to be applied during the emergency situation and the health crisis therefore from the taxpayer classification of 2020 Q1 in the assessment of this criterion the state tax and customs authority disregards the tax difference established on account of failures to settle due tax liabilities during the emergency situation and within thirty days following the end of it (11 March 2020 and 18 July 2020) to the debit of the taxpayer<sup>11</sup> and it applies this procedure to each classification before the end of the period of prescription.

- > *As regards the criterion in **item 3*** the NTCA checks <sup>12</sup> whether it started any enforcement procedure against the taxpayer listed in the trade register or the VAT-registered taxpayer during the year concerned or during the last four years preceding it.

If any kind of an enforcement action was executed during the said period, the taxpayer listed in the trade register or the VAT-registered taxpayer cannot be classified as a reliable taxpayer. Two exemptions are allowed by law from the above. A taxpayer may remain reliable if the debt was settled exclusively by book transfer in execution or by exercising the withholding right and no other enforcement act took place in relation to the case concerned. Moreover, in the course of classifications following the quarter including the day 18 July 2020 a taxpayer's reliable taxpayer classification cannot be cancelled on the basis of an enforcement procedure started between 11 March 2020 and 18 July 2020, i.e. enforcement procedures started during that period must be regarded as though they had never even been started.

- > *As regards **item 4*** the NTCA must check whether the taxpayer is, or was, during the year of classification or the last five years preceding it, under bankruptcy, liquidation or involuntary deregistration proceedings. Whether the taxpayer meets the criterion is not affected by the outcome of the proceeding, i.e. if the taxpayer had been under any of the above proceedings before but it did not lead to its termination, it does not affect the assessment of this criterion.
- > *In regard to **item 5*** the NTCA must check whether according to data as at the last day of the quarter concerned (i.e. the items due up to that date) the taxpayer listed in the trade register or the VAT-registered taxpayer does have a net tax debt of an amount over HUF 500,000, which would preclude its reliable taxpayer classification.

The net calculation of the tax debt means that the amount of the tax debt or debt recorded by the NTCA must be reduced by the amount of any overpayment recorded by the NTCA (i.e. calculating in a 'net way') not including the amount registered as deposit in the procedure whereby a tax certificate is issued or if the law makes the use of any allowance that is available for the taxpayer subject to the lack of tax debt or debt recorded by the NTCA.<sup>13</sup>

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<sup>10</sup>Pursuant to Sections 96-99 of Government Decree 465/2017. (XII. 28.) on the detailed rules on tax administration proceedings.

<sup>11</sup>Section 43 (1) of Act LVIII of 2020

<sup>12</sup>Pursuant to the Taxation Act, Act CLIII of 2017 on the Enforcement Proceedings to be carried out by the NTCA and Act LIII of 1994 on the Judicial Enforcement.

<sup>13</sup> Section 73 of the Taxation Act

Different rules had to be followed during the emergency situation and the health crisis, therefore in the course of the taxpayer classifications in 2020 Q1-Q3 in the assessment of this criterion in the case of taxpayers earlier classified as reliable the state tax and customs authority disregarded the fact if the taxpayer concerned had a tax debt of a net amount exceeding HUF 500,000 during the emergency situation or within thirty days thereafter (11 March 2020 and 18 July 2020).<sup>14</sup>

The disregarding of this criterion was not prescribed by law for subsequent classifications; this criterion needs to be assessed again in determining the classification of taxpayers.

- > *As regards item 6* the NTCA must check whether the taxpayer **is, or has been, the subject of the so-called tax number cancellation sanction** which precludes its classification as a reliable taxpayer.<sup>15</sup>
- > *In regard to item 7* the NTCA must check whether the amount charged by the NTCA to the taxpayer listed in the trade register or the VAT-registered taxpayer in the way of **default penalty that fell due** during the last two years preceding the year concerned, including excise penalties, did not exceed 1% of the tax performance of the taxpayer listed in the trade register or the VAT-registered taxpayer established for the year concerned, which would preclude its classification as a reliable taxpayer.

The following must be taken into account during such assessment:

- o **on tax type No. 215** of the tax account (account for the receipt of NTCA Penalty, default penalty and payments relating to self-revision),

- o **on tax type No. 415** of the tax account, i.e. **default penalty items**, (default penalties charged owing to non-compliant fulfilment of the NTCA EKAER notification obligation,

- o items identified in accordance with the rules of the Taxation Act and

- infringements established on the grounds of excise penalty and default penalty as per Act CXXVII of 2003 Excise Duties and Special Regulations on the Distribution of Excise Goods (up to 30 June 2017),
- infringements established on the grounds of excise penalty as specified in Act LXVIII of 2016 on Excise Tax (from 1 July 2017).

- > *Based on item 8* the NTCA checks whether the taxpayer is not qualified as a risky taxpayer, i.e. whether it meets any of the criteria for classification as a risky taxpayer.
- > *The method specified in item 9* concerning the calculation of the tax performance for the year concerned was already described in the criterion under item 2. A taxpayer can be a reliable one if it submitted returns stating tax liabilities during the period prescribed by law.

Different rules had to be followed during the emergency situation and the health crisis, therefore in the course of the taxpayer classifications in 2020 Q1-Q3 in the assessment of

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<sup>14</sup> Section 10 (2) of Government Decree 140/2020. (IV.21.) and Section 43 (2) of Act LVIII of 2020

<sup>15</sup> Section 246 (1) of the Taxation Act and Section 24/A (4) or (12), Section 24/B (1), Section 24/C (12), Section 24/d (2), Section 24/F (6) or Section 174 (1) of Act CXII of 2003 on the Rules of Taxation

this criterion in the case of taxpayers earlier classified as reliable the state tax and customs authority did not assess the taxpayer's tax performance<sup>16</sup>

The disregarding of this criterion was not prescribed by law for subsequent classifications; this criterion needs to be assessed again in determining the classification of taxpayers.

## **7 The criteria for classification as risky taxpayer<sup>17</sup>**

The NTCA classifies taxpayers listed in the trade register and VAT-registered taxpayers not under liquidation or winding up, meeting at least one of the following criteria, as risky taxpayers:<sup>18</sup>

1. it is included in the public list of taxpayers with large amounts of tax deficit,
2. it is included in the public list of taxpayers with large amounts of tax debt,
3. it is included in the public list of taxpayers employing undeclared employees,
4. it has been ordered by the NTCA to close its store repeatedly within the past year,
5. it is under the involuntary deregistration proceedings,
6. the amount of the tax difference established by the NTCA as a liability of the taxpayer during the year concerned and the preceding five years exceeds seventy percent of the taxpayer's tax performance for the year concerned, providing that the total amount of the tax difference established as a liability of the taxpayer must be reduced by the amount of the total tax difference established by the NTCA as an amount to the taxpayer's credit during the year concerned and the preceding five years.

Different rules had to be applied during the emergency situation and the health crisis therefore from the taxpayer classification of 2020 Q1 in the assessment of this criterion the state tax and customs authority disregards the tax difference established on account of failures to settle due tax liabilities during the emergency situation and within thirty days following the end of it (11 March 2020 and 18 July 2020) to the debit of the taxpayer<sup>19</sup> and it applies this procedure to each classification before the end of the period of prescription.

7. the amount charged by the NTCA to the taxpayer in the way of default penalty that fell due during the last two years preceding the year concerned, including excise penalties, exceeds seventy percent of the taxpayer's tax performance established for the year concerned,
8. its seat is registered with the address of a person authorised to accept service and it has been charged a procedural penalty that has become definitive because of obstructing the tax administration proceeding, during the year concerned or in the last three years preceding it.

A taxpayer with a tax deficit of a large amount, not being under bankruptcy, liquidation or involuntary deregistration proceedings can be disclosed if it fails to settle its tax deficit of the amount determined in a decision that became final and definite during the preceding quarter – exceeding HUF 10 million in the case of natural persons or HUF 100 million in the case of other types of taxpayers – by the relevant deadline, that is, the due date, i.e. 15 days within the day on which the decision became final and definite. The tax authority's decision cannot be regarded as final and definitive as long as the time limit for filing an action with the court or the administrative action instituted by the taxpayer has not been definitively closed.

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<sup>16</sup>Section 10 (2) of Government Decree 140/2020. (IV.21.) and Section 43 (2) of Act LVIII of 2020

<sup>17</sup> Section 157 of the Taxation Act

<sup>18</sup> Section 157 of the Taxation Act

<sup>19</sup>Section 10 (2) of Government Decree 140/2020. (IV.21.) and Section 43 (2) of Act LVIII of 2020

Accordingly, if the taxpayer does not fulfil its payment obligation prescribed in a decision by the deadline specified in the decision, and the taxpayer does not request judicial review of the decision during the time limit available for doing so, the statutory requirements for being disclosed on the list of taxpayers with large amounts of tax deficits are met even if the taxpayer fulfilled its payment obligation at a later date.<sup>20</sup>

A taxpayer's name is disclosed as a taxpayer with a tax debt of a large amount if the total amount of the taxpayer's tax debt, registered by the NTCA as continuously outstanding for a hundred and eighty days, net of overpayments, exceeds one hundred million forints, or in the case of a natural person, the net amount of ten million forints.

A the name of a taxpayer employing undeclared employees can be disclosed if a final and enforceable administrative or a final and binding court decision has established that the taxpayer did not fulfil its obligation to declare the establishment of an employment relationship. The data of taxpayers disclosed on its website are deleted by the NTCA after the passing of two years following the disclosure, provided the taxpayer has not repeatedly committed the violation underlying the disclosure. The NTCA does not disclose the name of a taxpayer employing undeclared employees if it has not charged a penalty for omission to the taxpayer on the basis of Article 225 (4) of the Taxation Act.

A taxpayer group is classified as risky if at least one of its members is classified as such.<sup>21</sup>

## **8 The duration of classification as risky**

The classification as risky taxpayer lasts one year from the date of classification in the case of items 1, 2, 4, 6 and 7, while in the case of item 5 it is in effect during the period of the involuntary deregistration proceeding. In the case specified in item 3 the risky classification lasts as long as the taxpayer appears in the disclosed list of taxpayers employing undeclared employees.<sup>22</sup>

The NTCA terminates the risky classification of the taxpayer upon the next quarterly classification if the taxpayer has settled its tax deficit and the associated penalty and surcharge, and the tax debt – on account of which it is included in the published list of taxpayers with large amounts of tax deficits and/or large amounts of tax debts – and there is no other reason for which the taxpayer should be classified as such.<sup>23</sup>

If the taxpayer is classified as a risky taxpayer on the basis of item 8, the risky classification applies in accordance with the general rules (from the first day of the month following the month of the classification), that is, from the effective date of the classification. The risky classification of a taxpayer on the basis of item 8 lapses after the classification procedure covering the quarter on the basis of the data existing on its last day it can be established that the criterion referred to in item 8 is no longer met.

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<sup>20</sup> Section 263 of the Taxation Act

<sup>21</sup> Section 157 (4) of the Taxation Act

<sup>22</sup> Section 157 (2) of the Taxation Act (Pursuant to Section 274/B (3) and (4) of the Taxation Act Section 157 (2) of the same, established by Act LXXXII of 2018 on the Amendment of Tax Laws in Connection with. Union Obligations and Certain Other Acts Relating to Tax Administration is to be first applied regarding classification concerning 2018 Q4. The risky classification of a taxpayer that was categorised by the NTCA as a risky taxpayer on account of appearing in the list of taxpayers employing undeclared employees before the entry into force of the Act, and does not appear on the disclosed list of the names taxpayers employing undeclared employees, is terminated on the effective date of Act LXXXII of 2018.)

<sup>23</sup> Section 157 (3) of the Taxation Act



The legal consequences of the classification are not to be applied if the taxpayer is under liquidation or winding up proceedings. If the proceeding is closed without the termination of the taxpayer without a legal successor (that is, with the client continuing to operate), the legal consequences of the taxpayer's categorisation as a risky one must be applied again, providing that the time of liquidation or winding up is not included in the one-year period.<sup>24</sup>

## 9 Notification of the result of the classification<sup>25</sup>

The NTCA notifies the taxpayer of the result of the first classification electronically. As long as the classification of a taxpayer is not changed, the NTCA does not notify the taxpayer concerned. The result of the classification can also be queried on the eBEV portal, together with information on compliance with the underlying conditions. Taxpayers not obliged to submit returns only electronically (aggregate report, aggregate declaration) or to communicate electronically, along with taxpayers without access details for electronic communication (client portal, company portal) are not notified about the result of the qualification, therefore taxpayers are definitely advised to provide for electronic accessibility.

If a classified taxpayer has a permanent authorised representative or agent to whom the notification can be sent on the basis of their power of representation and the authorised representative or agent has electronic accessibility (client portal, company portal), the NTCA will send the notification to such representative or agent.<sup>26</sup>

## 10 Can one object to classification?

If the taxpayer objects to its classification, it may submit an objection within ninety days of classification or the absence of it. No application for justification may be submitted if the deadline is missed.

If the NTCA allows the objection, it modifies the classification in accordance with the objection without adopting a decision and notifies this to the taxpayer electronically. The NTCA rejects an objection in the form of a decision.<sup>27</sup>

## 11 Classification upon legal succession<sup>28</sup>

If the taxpayer is established by legal succession, the classification of its legal predecessor(s) is also taken into account in the determination of its classification.

The NTCA assesses the satisfaction of the statutory requirements pertaining to the period preceding legal succession over the history of the legal predecessor taxpayer, including its behaviour.<sup>29</sup>

- > **Upon fusion, or merger** the legal successor qualifies as a reliable taxpayer if at the time of the fusion or merger both the legal successor and all legal predecessors are/were reliable taxpayers. If at the time of the fusion or merger the legal predecessor or any of the legal predecessors is qualified as a risky taxpayer, the legal successor also qualifies as such.
- > **Upon demerger or spin-off** or upon **transformation** the legal successor retains the classification of the legal predecessor.

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<sup>24</sup>Section 157 (2) of the Taxation Act

<sup>25</sup>Section 150 of the Taxation Act

<sup>26</sup> In the way of communication applying to it pursuant to Section 36 of Act CLI of 2017, (/Tax Procedures Act).

<sup>27</sup>Section 152 of the Taxation Act

<sup>28</sup>Section 151 of the Taxation Act

<sup>29</sup>Section 12 (2) of the Tax Procedures Act

- > In the case of a one-man economic association (e.g. one-man limited liability company) the period of the legal predecessor *sole proprietor* must also be taken into account.<sup>30</sup>

If the legal successor is classified as a risky taxpayer because its legal predecessor taxpayer was classified as risky, the one-year period of its classification as a risky taxpayer must be counter from the starting date of the classification of legal predecessor taxpayer as a risky taxpayer.

## 12 Legal consequences associated with classification

Depending on the classification the NTCA applies various legal consequences to classified taxpayers<sup>31</sup>.

Reliable taxpayers are essentially characterised by legal compliance and they fulfil their tax obligations. The law provides such taxpayers with benefits. By contrast, the operation of risky taxpayers clearly violate taxation rules therefore such taxpayers come under the scope of stricter regulations.

## 13 The advantages of being classified as a reliable taxpayer<sup>32</sup>

The purpose of the legal consequences linked to the reliable classification is to provide benefits for those who fulfilled their taxation obligations in time and are not or have not been under proceedings endangering the fulfilment of their obligations under the Taxation Act or other substantive taxation rules. The advantages attached to the reliable classification:

- > The duration of the NTCA's inspection cannot exceed 180 days if the taxpayer is continuously classified as reliable during such period.
  - o This benefit cannot be applied, however, if the taxpayer does not fulfil the obligation to cooperate, thereby obstructing the inspection. Particularly, if the taxpayer is not available for the NTCA during the inspection or does not make available all of its documents for the NTCA to enable the closure of the inspection within 180 days.
- > Reduced penalty for omission:
  - o The upper limit of the penalty for omission that can be charged if at the time of the perpetration of the unlawful act or that of its uncovering (its being recorded in a protocol) is classified as a reliable taxpayer, equals fifty percent of the maximum of the penalty for omission that can otherwise be levied, or fifty percent of a fixed amount of penalty or otherwise applicable penalty.
  - o That is, upon breaching the obligation where a non-natural person taxpayer would have to be charged a penalty for omission in the amount of HUF 500,000, the upper limit of the fine can be HUF 250,000 in the case of a reliable taxpayer. Of course the above provisions also apply in cases where the upper limit of the penalty for omission is specified by the legislator in the form of a percentage rate; for instance, the

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<sup>30</sup> Section 12 (3) of the Tax Procedures Act.

<sup>31</sup> Sections 154-156 and Sections 158-161 of the Taxation Act.

<sup>32</sup> Sections 154-156

penalty for omission that can be charged for the violation of legal regulations relating to EKAER reporting is, instead of up to 40%, in this case only up to 20% of the value of the goods regarding which false or incomplete data were reported or not reported, or not actually carried.

> Reduced excise penalty:

- o In the case of an excise tax violation if the taxpayer is classified as reliable, the excise penalty is governed by the reliable taxpayer classification rules of the Taxation Act concerning the modification of the upper limit of the tax penalty and the penalty for omission, as well as the levying of these.<sup>33</sup> Among such violations cases resulting in economic loss, (omission type) cases not resulting in economic loss and cases involving marketing without excise licence.
- o For instance, if the reliable taxpayer's breach of its obligations relating to excise products causes economic loss<sup>34</sup> to the central budget, the maximum amount of the excise penalty that can be charged is not more than 50% of the maximum of the excise penalty<sup>35</sup> that can be charged under the general rules.

*To illustrate through a practical example:*

*Economic loss identified to the debit of the taxpayer: HUF 100 000*

*The maximum amount of the excise penalty under the general rule: 500 000 HUF*

*The maximum amount of the excise penalty under the rule on reliable taxpayers: HUF 250 000*

- o If for instance, the breach committed by a reliable taxpayer causes no economic loss, i.e. the taxpayer commits a violation by omission, the maximum of the excise penalty equals 50% of the maximum of the excise penalty that can be charged under the general rules<sup>36</sup>.

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*To illustrate through a practical example (in the case of a company):*

*The maximum amount of the excise penalty under the general rule: HUF 750,000*

*The amount of the excise penalty under the rule on reliable taxpayers: HUF 375 000*

> > Reduced tax penalty:

- o The tax penalty, if the taxpayer was classified as a reliable taxpayer during the whole of the tax assessment period under tax inspection or on the date of the protocol on the findings of the tax inspection, 50% of the tax penalty that can be charged under the general rules, that is, 25% of the tax deficit, instead of the general rate of 50%.

> Automatic payment facility:

- o A reliable taxpayer has the option, if their net tax debt does not exceed three million forints at the time of the assessment of the application concerned, to apply for a payment facility of 12 months for the tax debt once a year without having to pay a surcharge on the debt. Based on such request the NTCA automatically provides

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<sup>33</sup>Section 100 (7) of ACT LXVIII of 2016 on Excise Tax (Excise Tax Act)

<sup>34</sup>Section 3 (1) 51. of the Excise Tax Act

<sup>35</sup>Section 100 (2) of the Taxation Act

<sup>36</sup>Section 100 (6) of the Taxation Act

a payment facility without surcharge, without assessing the satisfaction of the criteria specified in Article 198 (1) and (2) of the Taxation Act. A reliable taxpayer can, in addition to, or instead of, payment by instalments, ask for payment deferral. Please note that the possibility of automatic instalment payment does not apply to debts identified in Section 198 (3) of the Taxation Act, and that upon failing to pay the due instalments the benefit will lapse and the debt will fall due in a lump sum on which the NTCA will levy a late performance charge for the period starting from the original due date.

- o Such application can be filed electronically and the procedure is free of charge.
- o The NTCA makes and delivers its decision electronically on the application within 15 days of its receipt.
- o If the reliable taxpayer does not meet the criteria relating to the automatic payment facility, their application will be determined by the NTCA in accordance with the applicable general rules.

> Reduction of the time limits for disbursement:

- o The value added tax for the refunding of which a reliable taxpayer – not including a public limited company – has submitted an application will be disbursed by the NTCA within 30 days in the case stipulated in Section 64 (1) of the Taxation Act.
- o The value added tax for the refunding of which a public limited company has submitted an application will be disbursed by the NTCA within 20 days.

#### **14 What disadvantages stem from being classified as a risky taxpayer?<sup>37</sup>**

The legal consequences attached to classification as risky are to enable the NTCA to more closely monitor such customers and to encourage them to eliminate defects and make up for omissions. The disadvantages of being classified as a risky taxpayer:

> Longer time limit for disbursements:

- o The time limit for VAT disbursement is 75 days for risky taxpayers and the shorter time limits specified in Section 64 (3) of the Taxation Act cannot be applied to the disbursement of VAT.

> Longer time limit for inspections:

- o The general inspection time limits are 60 days longer in the case of a risky taxpayer if during the whole or a part the period covered by the inspection, or during the whole or part of the time of the inspection itself, the taxpayer is classified as risky.

> Higher amounts of late performance charges:

- o For a taxpayer classified as risky at the time of the calculation of a late performance charge the amount of the late performance charge calculated for the tax difference identified by the NTCA during tax inspection equals one three hundred and sixty fifth of one hundred and fifty percent of the late performance charge calculated on the basis of the general rules, for each calendar day.

> The fixed starting date of the establishment of the late performance charge:

- o In the case of a taxpayer classified as risky at the time of the calculation of a late performance charge in the decision establishing a tax debt as being owed by the taxpayer the NTCA cannot set a later

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<sup>37</sup>Sections 158-161 of the Taxation Act

date as the starting date for surcharge payment than the day on which the tax fell due or budget support was accessed, i.e. the amount of the late performance charge cannot be reduced on the basis of equity considerations.

- > Legal consequences relating to tax penalties, penalties for omission or excise penalties<sup>38</sup>(charging, rate of penalty):
- > If the taxpayer was classified as risky at the time of the violation of law or at the time of its detection, or the date of the minutes of the inspection, the tax penalty and the penalty for omission are to be charged on a mandatory basis.
- > The minimum rate of the chargeable tax penalty and penalty for omission is 30% of the maximum amount of the penalty that can otherwise be charged. In the case of a penalty of a fixed amount or rate the rate of the penalty is 130% of the otherwise applicable penalty.
  - o If at the time of the perpetration of the unlawful act or that of its uncovering (its being recorded in a protocol) is classified as a risky taxpayer, the maximum of the chargeable penalty for omission or excise penalty equals 150% of the maximum of the penalty for omission or excise penalty that can be charged under the general rules.
  - o In other words, in the case of a violation of an obligation, in which a non-natural person taxpayer could be charged a penalty for omission in an amount of HUF 500,000, the maximum amount of the penalty is HUF 750,000 for a risky taxpayer, while upper limit for the penalty for omission stemming from violating legal regulations concerning the EKAER notification obligation can be a maximum of 60%, instead of 40% of the value of the goods covered by a notification of false or incomplete data content or goods not notified, or not actually carried.
  - o In other words, for a violation of an obligation by omission for instance, 150% of the HUF 750,000 maximum amount of the excise penalty that could be charged to the taxpayer (for a business organisation to keep to the above example) under the general rules, that is, an amount of HUF 1,125,000 can be charged.
- > The preferential excise security deposit provision or reduction cannot be applied:
  - o In the case of the performance of excise-related activities (e.g. those of a tax warehouse, licensee, trader having an excise licence), the amount of the excise security deposit stipulated by law cannot be reduced and the deposit allowance cannot be granted for a risky taxpayer.<sup>39</sup>
- > Loss of the statutory exemption relating to the obligation to provide excise security deposit:
  - o If as part of its simplified tax warehouse licensee activity the taxpayer produces, from its own-produced still wine, bottle-fermented sparkling wine up to the amount specified by law, and stores such quantity of sparkling wine but in the meantime it is classified as risky, the excise security deposit exemption it has been granted can no longer be applied.<sup>40</sup>

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<sup>38</sup>Section 100 (7) of the Excise Tax Act

<sup>39</sup>Section 21 (3) a), Section 21 (10)-(11), Section 28 (2), Section 33 (2) of the Excise Tax Act.

<sup>40</sup>Section 134 (5) of the Excise Tax Act

- > No granting of excise related guarantee can be permitted
  - o Joint and several guarantee for the excise tax risk, or any part of it, can only be permitted to be granted to a taxpayer not classified as a risky taxpayer (along with meeting the relevant statutory criteria).<sup>41</sup>
- > Receipt of the excise licensee status:
  - o If a taxpayer produces and stores bottle-fermented sparkling wine as part of its small-scale wine-making activity, but is classified as a risky taxpayer, it must immediately submit an application to the NTCA for a simplified tax warehouse license.<sup>42</sup>

### **15 “Collision” of different classifications when a penalty is charged<sup>43</sup>**

If the rule on reliable and risky taxpayers were to be applied simultaneously<sup>44</sup> the penalty must be charged disregarding these provisions. Accordingly, in such a case the general rules on penalties must be applied to the customer concerned.

Such a case may be when at the time of the violation of law the taxpayer qualified as a reliable taxpayer, on the basis of which the maximum of the penalty for omission would be 50% of the penalty that could be charged on the basis of the general rules, however, at the time of the uncovering of the same violation the same taxpayer was already classified as a risky one, as a consequence of which the minimum and maximum amount of the penalty for omission that could be charged to it is 30%, and 150%, respectively, of the penalty under the general rules.

### **16 Publication of the list of reliable taxpayers**

Accordingly, in such cases the NTCA applies the general rules on penalties.

Pursuant to Section 261 of the Taxation Act the NTCA posts the names and tax numbers of the taxpayers classified as reliable taxpayers in its classification procedure.

### **17 Legal regulations relating to taxpayer classification:**

- > Sections 150-162 and Section 261 of Act CL of 2017 on the Rules of Taxation (Taxation Act), and
- > Section 12 (2)-(3) of Act CLI of 2017 on the Tax Administration Rules (Tax Procedures Act).

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<sup>41</sup> Article 18 (17) of the Excise Tax Act

<sup>42</sup> Section 137 (6) of the Excise Tax Act

<sup>43</sup>Section 162 of the Taxation Act

<sup>44</sup> Pursuant to Section 155 (1)-(2) and Section 161 of the Taxation Act.