

Corporate tax relief on donations after adjusting other tax returns and incurring tax debt (3/14/19)

Section 12 of the Corporate Income Tax (CIT) Act allows taxpayers to take one of three donation reliefs, but none is available if at least one of the prohibitory circumstances is present, including a tax debt. This article explores cases of adjusting the CIT return where an additional tax assessment is or is not considered a debt.

CIT rules

Under section 12(1) of the CIT Act, a taxpayer who has donated to a qualifying public benefit organisation under the Public Benefit Organisations Act, to a state-funded institution, or to a state-owned company that performs national-culture functions delegated by the Ministry for Culture, may choose one of three reliefs in the financial year.

Section 12(6)(3) of the CIT Act provides that no relief is available where the donor's total tax debt on the first day of the tax period in which the donation was made exceeds €150, except for tax payments with deadlines duly extended under the Taxes and Duties Act.

Before applying this CIT rule, we should consider a special proviso in paragraph 93 of the Cabinet of Ministers' Regulation No. 677, which states that an additional tax assessment resulting from an adjustment to the CIT return for the tax period made in the current or the previous financial year is not considered a tax debt if the additional tax assessment and the late fee have been "paid in a timely manner."

Filing adjustments to CIT returns and paying extra tax and late fees

The CIT rules imply that an additional tax assessment that results from adjusting CIT returns for the current or the previous financial year is not considered a tax debt, but neither the Cabinet of Ministers' Regulation nor the CIT Act defines the meaning of the condition "paid in a timely manner."

Interpreting grammatically the meaning of "in a timely manner" tells us the phrase means "a little early," "in good time," or "before." So the additional tax assessment and the late fee should be paid either before or within a reasonable time after filing the adjustment to the tax return. We believe that if the taxpayer pays the additional tax assessment and the late fee on the date he files the adjustment, or on the following day, those payments have been clearly made in a timely manner, and the additional tax assessment does not become a debt under section 12(6)(3) of the CIT Act.

Section 23.1(2) of the Taxes and Duties Act provides that a tax charge is treated as paid on the date the tax payment is duly received into the central or local government budget. This raises the question of how many days are allowed before the national budget must receive the payment to prevent the additional tax assessment from becoming a debt.

In answering this question, the SRS invokes section 29(3) of the Taxes and Duties Act, which provides that a late fee is not charged if the central or local government budget has duly received the tax payment within five working days after the due date, as well as invoking section 18(1)(11) of the Taxes and Duties

Act, which implies that a tax officer may decide to collect an overdue tax payment no earlier than five working days after its due date.

Thus, when filing an adjustment to the CIT return, the additional tax assessment and the late fee should be paid into the national budget in a timely manner. If those payments are received within five working days after the tax return was adjusted, the additional tax assessment resulting from the adjustment will not be considered a tax debt, and the taxpayer will qualify for one of three donation reliefs, assuming none of the other circumstances prescribed by section 12(6) of the CIT Act is present.