

EKAER implementation

Implementation of the new road transportation control system in Hungary

EKAER, which is designed to minimize the possibility of VAT fraud will be implemented from January 1st, 2015 in Hungarian public road transit.

EKAER number and the EKAER system

EKAER stands for Electronic Trade and Transport Control System ('elektronikus közúti áruforgalom-ellenőrző rendszer'). The new regulations making the use of the system mandatory in Hungary will take effect as of January 1st, 2015. aiming to filter out VAT fraud and minimize their possibility in public road transit to the fullest possible extent. Therefore it will monitor goods trafficking inside Hungary and also goods transported on public roads between member states of the European Union.

As from 1 January 2015, a reporting obligation applies to

- 1) acquisitions of goods from another EU Member State to the territory of Hungary or acquisitions for other purposes,
- 2) supplies of goods from the territory of Hungary to another EU Member State or supplies for other purposes, and
- 3) first supplies of goods subject to taxation in domestic trade, to other than end users, involving road transportation, if performed by using vehicles subject to road toll payment (i.e. vehicles exceeding 3.5 tons of maximum permissible gross weight).

The reporting obligation shall also be applied in certain cases of risky goods even if such goods are transported by a vehicle not subject to road toll payment (vehicles up to 3.5 tons of gross weight).

The reporting obligation shall be applicable to transportations by using both vehicles subject to road toll payment and vehicles not subject to road toll payment, respectively, if the volume and value of the goods transported exceed certain limits.

As from 1 January 2015, the above activities may only be pursued by taxpayers having a valid Electronic Public Road Trade Control System (Elektronikus Közúti Áruforgalom Ellenőrző Rendszer = EKAER, hereinafter EKAER) number.

It is IMPORTANT to emphasize that the following persons are obliged to comply with the reporting obligation:

- in cases according to paragraph 1), the consignee and/or the recipient;
- in cases according to paragraph 2), the consignor or the loader;
- in cases according to paragraph 3), the consignor.

EKAER numbers identify units of goods transported by motor vehicles in the following manner: an EKAER number identifies the unit of goods (cargo) that is transported

- in the same one vehicle,
- to one address of receipt,
- for one client (for the owner of the goods if the person's own goods are transported, while for the consignee in the case of lease work),
- in a single movement of the vehicle on the given route.

One EKAER number may involve several types of goods identified by several tariff headings.

During the 15-day validity of the EKAER number, certain data may be modified several times, however, in the course of a control performed by the national tax and customs authority, the EKAER number must always show the currently valid data, for which the person subject to the reporting obligation shall be responsible.

The person subject to the reporting obligation must make the EKAER number available to the transport operator or transport organizer in order to ensure that this person also be in possession of the identification number for controls by the authority. The manner of how to 'make the number available' is not regulated formally, it may be communicated to the transporter in any possible manner.

The new provisions of the Act on the Rules of Taxation relating to controls ensure possibilities for the control officers of the national tax and customs authority proceeding on the spot to take certain new measures. In view of the fact that a commercial quantity of goods owned by the VAT subject may only be transported in possession of documents (in particular, the consignment note and invoice) verifying the true origin of such goods in a credible manner, the control officer may oblige the person performing the transportation to make a statement concerning

- the owner of the goods,
- the origin of the goods, and also
- may request that the documents verifying the ownership be presented.

In addition to the above, during the control, it shall be possible to request any other involved transporter, the consignee, the recipient and also the consignor to make statements concerning

- the denomination and quantity of the goods transported,
- the denomination and registration number of the transport vehicle,
- the receipt of goods and address of unloading,
- the EKAER number, and

- in the event that the address of unloading is other than the registered seat, site or branch of the VAT subject, the title of real property use.

In order to ensure the integrity of goods, the national tax and customs authority may apply an official seal (a package seal or a cargo bay seal) to the transport vehicle – except for livestock and highly perishable goods

- if so justified by certain risk factors, in particular, the type of cargo, a lack of agreement between the consignment and the place of destination, and/or between the quantity of goods transported and the type of transport vehicle, an on-going enforcement procedure, pursuing an intra-community commercial activity without a community tax number (VAT ID number), indicating a non-registered site as the place of unloading, and/or

- in the event that the VAT subject involved in the transportation of the goods refuses to make the statements.

I hereby call your attention to the fact that the unauthorized removal of and/or damage to the official seal, the opening of a sealed package and/or sealed cargo bay shall be classified as the criminal offence of a breach of seal, pursuant to Article 287 of Act C of 2012 on the Criminal Code.

The legal consequence of failure to comply with the reporting obligation associated with activities involving road transport, as well as the reporting of incorrect, untrue or incomplete data shall be that the unreported goods shall be deemed of unconfirmed origin, and the national tax and customs authority may impose **a default penalty amounting up to 40% of the value of the unreported goods.**

In relation to the sanction of default penalty imposed as a consequence of the failure to comply with the reporting obligation, as well as the reporting of incorrect, untrue or incomplete data, the goods deemed of unconfirmed origin – except for highly perishable goods and livestock – may be seized to the extent of the value of the amount of the default penalty, and the national tax and customs authority shall provide for that in its decision imposing the penalty. A protocol shall be made on such seizure, and the seized movable property may be sequestered and shipped away. The national tax and customs authority shall communicate its decision on imposing the default penalty to the taxpayer or its representative, authorized agent or employee being present, and then, as from the moment of its communication, the decision shall become enforceable, irrespective of any possible appeal.

The above legal consequences – except for the cases of unauthorized removal of the official seal – shall be applied by the national tax and customs authority for the first time as from 1 February 2015.

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