SZECSKAY
Ügyvédi Iroda · Attorneys at Law

NEWSLETTER
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The Firm is comprised of 20 attorneys, including local counsel and foreign attorneys admitted to practice in Austria, Canada, England, France, Germany and the US.

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- Real Estate
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- Energy
- Litigation Dispute Resolution / Arbitration

Content

Focus - Topic of the month: Judgment of the European Court of Justice in connection with the Italian regional tax

The European Court of Justice (the "**ECJ**") passed a judgment by way of preliminary ruling on October 3, 2006 on the interpretation of Art. 33 of the Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (the "**Sixth Directive**") as modified by the Council Directive 91/680/EEC of 16 December 1991. Art 33 of the Sixth Directive exceptionally provides for the introduction or maintenance of harmonized turnover taxes as well as for national taxes, duties or charges on the sale of goods, the rendering of services or imports, which cannot be characterized as turnover taxes (i.e. value added taxes), provided that those taxes, duties or charges do not, with respect to the trade between Member States, give rise to formalities connected with the crossing of frontiers.

In Italy, a regional tax (imposta regionale sulle attività produttiva, "**IRAP**") is levied on productive activities based on a legislative decree of 1997 the basis of which is the net value of production deriving from the regular exercise of an independently run activity whose object is the production of or trade in goods or the provision of services, i.e. the difference between production value and production costs as shown in the profit and loss account. IRAP is due within a specified time period and establishes an independent tax liability with respect to every single time period.

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According to the case law of the ECJ, it is not contradictory to Art. 33 of the Sixth Directive to impose taxes, duties or charges on goods and services which do not display one of the essential characteristics of the value added tax. It is therefore sufficient if the tax in dispute does not have one of the characteristics of the value added tax in order to be imposable like the turnover tax.

The ECJ has summarized the four traits of the value added tax as follows:

(i) it applies generally to transactions relating to goods or services;

(ii) it is proportional to the price charged by the taxable person in return for the goods and services which he has supplied;

(iii) it is charged at each stage of the production and distribution process, including that of retail sale, irrespective of the number of transactions which have previously taken place;

(iv) the amounts paid during the preceding stages of the process are deducted from the tax payable by a taxable person, with the result that the tax applies, at any given stage, only to the value added at that stage and the final burden of the tax rests ultimately on the consumer.

As regards the second essential characteristic of VAT, the ECJ has established that, whereas VAT is levied on individual transactions at the marketing stage and its amount is proportional to the price of goods or services supplied, IRAP is, in contrast, a tax charged on the net value of the production of an undertaking in a given period. Its basis of assessment includes elements such as variation in stocks, amortization and depreciation, which have no direct connection with the supply of goods or services as such. Pursuant to the ECJ, IRAP cannot be considered proportional, in those circumstances, to the price of goods or services supplied.

As regards the fourth essential characteristic, IRAP falls outside the ambit of the turnover tax if it is levied on production in such a way that it is not certain that it will be borne, like a tax on consumption such as VAT, by the final consumer.

Based on the characteristic of IRAP, the ECJ has deemed same as complying with Art. 33 of the Sixth Directive and has ruled that it was not the same tax type as the turnover tax as such.

The judgment of the ECJ might affect the discussion in Hungary about the characteristic of the local trade tax as turnover tax as the community-wide legal interpretation as created by the preliminary ruling binds the Hungarian courts and authorities with retroactive force. In the course of a preliminary ruling, Hungarian courts may turn to the ECJ with new questions on interpretation if, in their opinion, the reasoning to the interpretation of Art 33 of the Sixth Directive or the application of the judgment has left any doubts.

With respect to the Hungarian local trade tax, the final judgment in the preliminary ruling proceedings before the ECJ can be expected at the end of 2007.

Public Procurement: Publication of employment matters on the internet

Section 60 of the Act CXXIX of 2003 on Public Procurement lists the precluding reasons in the cases of which the tenderer may be excluded from participating in the procurement procedure. A

tenderer or sub-contractor may not participate in the procurement procedure if he has been found guilty by a definitive administrative or court ruling within the preceding five years and sanctioned by employment penalty or payment order for any infringement of obligations relating to the implementation of employment agreements, non-compliance with the obligation of notification relating to employment and in connection with the employment of foreign nationals.

Prior to the amendment of the Act on Public Procurement on August 24, 2006, the Hungarian Labor Inspectorate ("**HLI**") issued an official certificate in every single case in connection with the above mentioned - if such case falls within the ambit of the Act LXXV of 1996 on labor control - which certificate had to be placed at the disposal of the contracting entity in the tender of the tenderer if it could be proved that other excluding reasons were non-existent.

After the amendment, the contracting entity has to control the realization of the referred condition on the grounds of the data published by the HLI, i.e. the tenderer and the subcontractor will not have to prove the lack of the precluding reasons in the future.

In line with this, section 8/C of the Act LXXV of 1996 on labor control has been amended as well, based on which the HLI maintains an official registration in order to prove the orderly state of the employment related relationships of the employers in proceedings before other authorities. The aim of this amendment - according to its reasoning - is to create the legal background of (i) the decisions of the HLI made in connection with each employment control and the publication of the data contained therein, (ii) the data displayed in the publication and the surrendering of such data to entities and persons defined in the provision.

The HLI published the data with respect to law infringements established by a legally binding and enforceable decision executed after August 4, 2005 within 30 days after the entry into force of the amendments of the act on labor control, i.e. on September 23, 2006. The official registration of the HLI - also published on their homepage - contains:

(i) the name, seat and tax number of the employer, the name, address and tax identification number of the employer who is a natural person having no tax number;

(ii) the date and number of the decision establishing a law infringement;

(iii) the identification of the law infringement and the date of the entry into force and enforceability of the establishment; and

(iv) the denomination and scope of the applied legal consequences.

The HLI erases the published data after five years of the adoption of the decision on the basis of which the data was registered.

The Act on Lobby Activities has come into force

Act XLIX of 2006 on Lobby Activities entered into force on September 1, 2006 (the "**Lobby Act**").

The aim of the Lobby Act is to create the legal framework for lobby activities, as in earlier times there were no such rules at all in Hungary. The Lobby Act is to be applied to activities which are based on a mandate, executed for a consideration (i.e. businesslike) and aim at influencing the contents of decisions of public

authorities (e.g. the Parliament, the Government, the local authorities, other governing entities, etc.).

Lobby activities may be carried out by natural persons, entities, and organizations which are not qualified as entities, which are listed in the lobbyist registry. The registry is maintained by the Central Office of Justice which is governed and controlled by the Minister of Justice.

The Lobby Act contains rules with respect conflict of interest, basic rules on the conduct of lobby activities and sanctions for the infringement of the provisions of the Lobby Act.

A quarterly report has to be prepared on the activities of the lobbyists which has to be filed with the Central Office of Justice and, at the same time, the respective central decision making bodies quarterly file a report to the Central Office of Justice which publishes the above mentioned reports.

The individual detailed rules in connection with the conduct of lobby activities, e.g. the provisions with respect to the registry, the lobby ID-card and the fines to be paid in case of infringement of the rules in connection with lobby activities, are contained in the Government Decree 176/2006. (VIII. 14).

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