

newsletter

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CIVIL LAW

Executive officer's liability insurance

As indicated in our December 2013 newsletter, the new Civil Code introduced new regulations concerning the liability of executive officers as of 15 March 2014.

According to the new provisions, the executive officer may be directly and held personally liable sued for damages under certain circumstances. This led insurance companies to introduce new insurance products which cover the liability of ex officers. Some insurance policies may be taken out and paid for by the executive officers personally, while some may be taken out by companies and employers.

In relation to such insurance coverage, the question is whether a tax payment obligation arises. In case of insurance that covers only personal income, such as liability insurance for doctors, accountants etc., no tax payment obligation arises. On the other hand, insurance that does not

comply with requirements of the Personal Income Tax Act (e.g. personal insurance) may be taxed at a rate of 51.17%.

Regulatory requirements for trustees

As indicated in our previous newsletters, the New Civil Code has introduced trusts to Hungarian civil law. Act XV of 2014 on trusts and the regulation of trust activities governs related taxation issues. The same Act sets out the regulatory requirements pertaining to trustees.

Those trustees who carry out their activity as a business ("Professional Trustees") are subject to the licence of the Hungarian National Bank (the "HNB") and they must comply with several requirements. Professional Trustees may operate in the form of a limited liability company or private limited company limited by shares having their registered seat in Hungary respectively, or a registered Hungarian branch office of an undertaking established in another Member State of the European Economic Area. It should be noted that trustees conducting their activity without business purposes ("Non-professional Trustees") may easily fall into the category of Professional Trustees. The minimum criteria for qualifying as Professional Trustees are the following: if the trustees conclude agreements on trusts at least twice a year, or if the asset management fee exceeds 1% of the handled property's value at the time of the conclusion of the contract, or the trustee carries out its activity for the purpose of realising economic benefit.

Non-professional Trustees also have to report in writing to the HNB all information related to the trust managed by them, and the HNB keeps a register of those trusts and the Non-professional Trustees.

PROPERTY LAW

Collateral Register

The New Civil Code has introduced a new regime concerning the registration of mortgages over movable properties. Pursuant to these rules, mortgages over movable properties have to be registered in an electronic online register operated by the Hungarian Chamber of Notaries, known as 'Collateral Register', which is publicly available free of charge. The detailed rules pertaining to this register are set out in Act CCXXI of 2013 on the Collateral Register, which entered into force together with the New Civil Code on 15 March 2014.

All mortgages over moveable properties, rights and claims, as well as the retention of title in case of the sale of moveable properties, the factoring of a claim and financial leasing agreements, have to be registered in the Collateral Register by means of a "collateral declaration". Nevertheless, if there is a special authentic register of the moveable property or right in question (e.g. the Company Registry for quotas of limited liability companies, the Ship Register for ships, etc.), the mortgages, retention of title and leasing agreements have to be listed in such authentic registers.

The basis of the Collateral Register is the person being the beneficiary of the mortgage, the buyer, the borrower or the lessee, not the mortgaged right or the leased moveable property. Furthermore, it only proves that the relevant declarations required for the above registrations were made by the person, with the content and at the time recorded in the register. However, the Collateral Register does not certify the content of the collateral declarations made, or the existence of mortgages and other registered rights.

The registration of declarations in the Collateral Register requires to become a registered user thereof and to have a qualified electronic signature. Firstly, one has to submit a registration request on the website of the Collateral Register. Secondly, in order to validate such a

registration request, an “identity statement” has to be made before a notary public concerning the authenticity of the data contained in the registration request. It is also possible to register permanent representatives of natural or legal persons as users of the Collateral Register, but this registration should be made in full before a notary public. Registered users not having a permanent representative with respect to the Collateral Register may authorize an attorney-at-law who is a registered user to make collateral declarations on their behalf. It should be noted that both the registration as a user and the submission of a declaration are subject to a fee.

In case of mortgage agreements, sales with the retention of title, and factoring or leasing agreements, when provided for by the parties, the notary public incorporating the agreement into a notarial deed or – under certain conditions – the counter-signing lawyer, may also register the declaration related to the agreement in question.

Declarations can also be made before a notary public, even without prior registration as a user. In that case, the notary public shall first register the person making the declaration to become a registered user, and then enter his declaration into the Collateral Register.

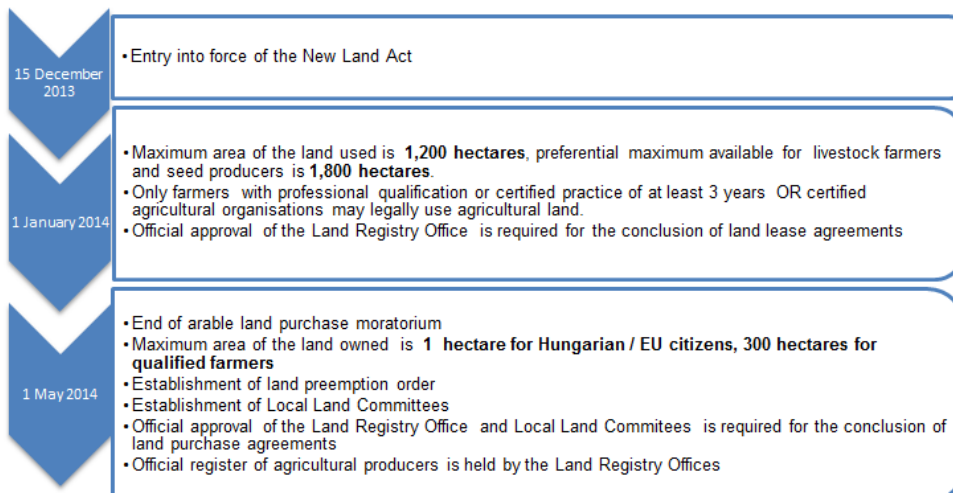
Hungarian Land Purchase Moratorium Elapses on 30 April 2014

In 2004, the EU introduced transitional measures to exempt the Hungarian market from the principle of free movement of capital and to prohibit land purchases by EU and third country nationals until 2011. These measures were put in place in an effort to prevent foreign investors from a massive takeover of arable lands in Hungary, available for significantly lower price than in western European countries. Based on a government initiative, the transitional period was extended to 30 April 2014.

With the land transfer moratorium’s end, an EU market opening is in view, as all EU citizens will be allowed to purchase agricultural lands in Hungary up to a limit of one hectare, without any further conditions required. In the meantime, new land acquisition rules were introduced by legislative measures for those natural persons who aim to acquire land between one hectare and the legal maximum of three hundred hectares.

In general, the concept of Act CXXII of 2013 on agricultural land (“New Land Act”) is that only those natural persons who are committed to agricultural production are entitled to possess agricultural land. It means that only ‘farmers’ with professional qualification or certified practice of at least three years are allowed to purchase agricultural lands. The specific qualifications required for becoming a farmer are now listed by separate government decrees completing the New Land Act. It is important to note that legal entities and non-EU nationals remain excluded from the opportunity to purchase arable lands in Hungary.

The New Land Act entered into force in multiple steps. The below timeline summarizes the most important elements of the three-step entry into force:



TAX LAW

Bitcoin: definition and taxation

Bitcoin is a digital currency that is accepted as remuneration for some goods and services offered on the Internet and can also be sold for real money. It was created without an official issuer in 2009, and is not subject to the supervision of any state's financial regulatory authority. Accordingly, the lack of legal supervision also means there is a lack of applicable liability or guarantee rules, and therefore its usage may be riskier than any other means of electronic payment. Bitcoin is accessible for private persons through "mining", the operation of special software on powerful computers, or can be purchased for foreign currencies such as EUR, USD etc.

The taxation of income earned through Bitcoin raises several questions. When answering those questions, one has to differentiate between Bitcoin mined and Bitcoin bought for foreign currency.

Bitcoin mined is taxable under the Hungarian provisions as income from self-employment activity, while income realized on the sale of the purchased Bitcoin qualifies as an income from other activities, both resulting in a 16% personal income tax and a 27% healthcare contribution payment obligation. If Bitcoin is acquired by a trader as a counter value for its goods or services, Bitcoin would be taxed in line with income realized from such trade activity; however, certain issues would still be open, such as the determination of the value of the acquired Bitcoin, as it could potentially vary widely from day to day.

Infringement procedure vs. Hungary on retail-sector tax has been withdrawn by the European Commission

In 2011, the European Commission launched an infringement procedure against Hungary charging that the extraordinary tax imposed on retail trade companies was discriminatory against foreign companies. At this juncture, the European Commission has decided not to push the case before the European Court of Justice (ECJ).

The same tax was challenged by the sports apparel company Hervis before the court, which referred the case for a preliminary ruling to the European Court of Justice (ECJ). In its ruling in February, the ECJ declared that such a tax could be discriminatory and disproportionate, but it is for the national court to decide whether, in fact, the tax has a bigger negative impact on foreign companies than on domestic ones. The decision of the Hungarian court is scheduled for release in April.

The Hungarian government is satisfied with the ECJ decision, and has concluded that the case was dropped because the retail-sector tax is not discriminatory. However, the non-binding decision of the ECJ in the Hervis case clearly has pointed out the potentially discriminatory nature of such taxes, indicating that each claim should measure on a case-by-case basis, thus giving the final decision to the national court.

DATA PROTECTION LAW

Hungary infringed EU law when compelling the Data Protection Supervisor to vacate office

On 8 April 2014, the European Court of Justice ruled that Hungary breached the Data Protection Directive when forcing the Data Protection Supervisor, Mr. András Jóri, to leave office.

According to the provisions of the directive, every Member State is obliged to appoint one or more authorities responsible for monitoring, safeguarding and if necessary, enforcing the application of the directive. Until 2012, the responsible authority was the Data Protection Supervisor. On 29 September 2008, Mr. András Jóri was appointed for six years to fulfil the tasks entrusted to the supervisory authorities. However, the newly elected Hungarian Parliament, with effect from 1 January 2012, decided to change the system. The Supervisor was replaced by a national authority for data protection and freedom of information. As a result of this change, Mr. Jóri had to vacate office before his full term expired.

Immediately after these measures had been taken by Hungary, the European Commission sent an informal letter in an effort to convince Hungary to repeal its legislation. The main ground of the Commission's letter was that the Data Protection Directive guarantees the independence of its safeguarding authorities, which was seriously affected by the change in political climate. Hungary declined to comply with the notice of the Commission and the latter launched an infringement procedure that evolved to the last stage and had to be decided by the ECJ.

The ECJ, in its judgment, pointed out that the authorities established in line with the provisions of the directive must in all circumstances be allowed to perform their duties without any external influence and their decision-making process must be free from any political influence. Consequently, the independence of supervisory authorities covers the obligation to allow them to serve their full term of office and may only compel them to vacate office before the expiry of the full term in accordance with the applicable legislation. Similar to the provisions applicable to the European Data Protection, the Hungarian legislation in force from 1 January 2012 says that the term served by a Supervisor shall not be prematurely brought to an end unless there are overriding and objectively verifiable grounds for doing so. The ECJ found that these grounds were not met by Hungary and therefore held that Hungary failed to fulfil its obligations under the Data Protection Directive.

It is now up to Hungary to decide how it will compensate the former Data Protection Supervisor. Should the Commission find the measures taken inadequate and unsatisfactory, it can bring the case again before the ECJ, where the Court's negative decision could mean a high financial penalty for non-compliance with a previous judgment.

EU LAW

Commission requests Hungary to apply single excise duties rate for spirits

To prevent distortions of competition in the Single Market, excise duties for alcohol are harmonised under the EU Directive 92/83/EEC on the structure of excise duties. Under that Directive, Member States must apply a single rate of excise duty on all spirit drinks based on their alcohol content.

As part of its April infringements package, the European Commission has requested that Hungary amends its legislation that provides for two separate excise duty rates for spirits drinks, depending on the product's composition and production method.

This procedure is in the stage of the reasoned opinion and Hungary has two months to send an answer to the Commission. If the Commission is not satisfied with the answer, it may refer the case to the ECJ.

Exempting homemade spirits from excise duty is against EU law

In 2010, Hungary adopted an act that reduced the excise duty on homemade spirits, specifically, pálinka to 0% up to 50 litres. The applicable directive requires all Member States to apply excise duty for alcoholic beverages other than wine and beer.

However, due to the special provisions of the directive, Hungary was authorized to apply a reduced rate of excise duty on alcohol manufactured by distilleries from fruit supplied by fruit growers for the personal use of the latter. This preferential rate should not be less than 50%, and its application should not exceed the amount of 50 litres.

The Commission took the view that Hungary did not comply with EU rules and launched an infringement procedure, resulting in the question coming before the European Court of Justice (ECJ).

On 10 April 2014, the ECJ ruled that Hungary infringed EU law when exempting the private production of small quantities of spirits from excise duty. The ECJ pointed out in its judgment that the respective directive does not allow a reduction greater than 50%, nor does it give discretionary power to the Member States to exempt a spirit from excise duty.

According to the decision of the ECJ, Hungary must withdraw the act previously enacted, otherwise the Commission is entitled to launch another infringement procedure, which could result in high penalties for Hungary.

The end of roaming charges

On 20 March 2014, the European Parliament approved the "Connected Continent package" in the first reading. The key message of the passage of "Connected Continent" is that, from 15 December 2015, European citizens will most likely pay the same fee calling anywhere across Europe. The package also contains provisions regarding "net neutrality", principle according to which the Internet should be an open system. This would mean that companies should be prevented from offering deals, for example, on higher data-transmission speeds, which could restrict access by their rivals.

The provisions eliminating roaming fees are welcomed by companies as well as by consumer protection organizations; however, net neutrality is also subject to debate. Consumer protection organizations are satisfied with this approach but telecommunication companies believe that the European Union is creating barriers to the development of the telecommunication industry.

According to the EU ordinary legislative procedure, the European Parliament and the Council adopt rules together. We must therefore wait until the Council's adopting decision before we can draw conclusions on the outcome of the package.

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