

## newsletter

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### TAX LAW

#### Is crisis tax discriminatory? Decision of the European Court in the Hervis case

In October 2010, in order to fill a financial gap, Hungary introduced a special temporary “crisis tax” on retail companies, effective until 1 January 2013. It involved a steeply progressive tax rate that was applied on the basis of the group’s consolidated turnover (i.e. inclusive of net sales income). The tax base was to be determined based on the proportional net sales income of the respective company compared with the total income of the group.

Because this taxation arrangement implies that a taxable person part of a group may pay a higher tax than a taxable person that was not part of a group and that has the same revenue, Hervis Hungary asked the European Court to issue an opinion on the legality of this crisis tax, in particular regarding the principles of freedom of establishment and non-discrimination between Member States.

In its decision of 5 February 2014, the European Court established that the application of the steeply progressive scale to a consolidated tax base on turnover is liable to disadvantage legal persons that are part of a group and that are linked to companies established in another Member State.

Now it is up to the national court to determine whether the higher rate in Hungary is imposed mainly on companies with a registered office in another Member State and if so, to hold that the Hungarian legislation entails indirect discrimination depending on the company’s registered office. The effects of the European Court’s decision cannot yet be estimated, however, it may be the basis for future tax refund claims.

## **Modification applicable to the date of performance of transactions with periodic settlements**

As from 30 June 2014, new rules will apply to settlement periods in which the due date of the payment falls after 30 June 2014.

As a general rule, the date of the performance of business transactions subject to the rules of periodic settlements is the last day of the settlement period. An exception will apply to public service agreements, as specified in the Civil Code, and to telecommunication services. In these cases, the due date of the payment will be considered as the date of performance.

The provisions for periodic settlements must be applied in all cases where consideration in the course of a transaction is stipulated for a pre-determined period, *i.e.* these rules will also be applicable, even if there is only one settlement period.

## **CONSUMER LAW**

### **Consumer protection referees to be appointed**

The Consumer Protection Act (Act CLV of 1997) has been modified as from 1 February 2014, introducing an obligation to appoint a "consumer protection referee" for companies that meet the following conditions:

- the company's activity involves or may involve consumers;
- the company employs over 250 staff; and
- the company's annual net turnover exceeds the forint equivalent of EUR 50 million or its balance sheet total exceeds the forint equivalent of EUR 43 million.

A company meeting these conditions must appoint at least one consumer protection referee in each country in which (i) it has its registered office, sites or branch offices exercising retail activities, (ii) it provides public services, or (iii) it offers consumer services.

Private entrepreneurs, foreign company representation offices, civil law companies and building societies are exempted from this obligation.

The consumer protection referee will be in charge of monitoring the company's activities involving consumers and organizing training sessions related to consumer protection issues. The consumer protection referee will also be in contact with the consumer protection authority and other authorities dealing with consumer protection issues.

The referee can perform its activities under employment or mandate agreement and should have an appropriate consumer protection qualification. The Consumer Protection Act provides an extended deadline to 31 July 2014 for consumer protection referees to obtain the necessary qualification, indicating that they can perform their activities without such necessary qualification until that time.

## **BANKING LAW**

### **New Act on Credit Institutions and Financial Undertakings**

On 17 December 2013, to amend certain EU Directives, the Hungarian Parliament adopted Act CCXXXVII on Credit Institutions and Financial Undertakings ("New Act") which entered into force on 1 January 2014. The reasons behind adopting this New Act were that certain EU

directives had to be implemented and the structure of the Previous Act was already too complicated as it had been amended several times.

While many core provisions of the previous Act dated 1996 remain the same, such as the initial capital requirements for banks (HUF 2 billion) and financial undertakings (HUF 50 million), the New Act introduces various changes, in particular in the rules of licensing, activity and operation, confidentiality, supervision, accounting and consumer protection.

The New Act prescribes clear competences for corporate governance management teams, as well as obligations for financial institutions to comply with banking technical and IT requirements.

As regards the rules of licensing, the New Act sets out the conditions to be met by financial institutions to obtain the licence delivered by the Hungarian National Bank ("HNB").

Besides, the New Act sets new capital requirements laid down in European Capital Requirements Regulations. Those changes were primarily due to the necessity to transpose the EU requirements of the global banking system set in Basel III.

Finally, as regards consumer protection, the New Act prescribes that clients may at any time opt for another product whose pricing is transparent, and banks must abide by a specific timeline when informing their clients of a termination of their mortgage-facility agreement.

## REAL ESTATE

### The new civil code improves tenant protection

The new Hungarian civil code maintains and even improves the protection of tenants.

Any change in property will continue to not affect the lease agreement, the tenant remaining entitled to the use of the real property under unchanged conditions. The new legislation provides that the former and the new owner shall bear joint liability for performing the landlord's obligations undertaken in the lease agreement with regard to the tenant. Parties to a purchase agreement may only agree on the exclusion of their joint liability towards the tenant with the tenant's consent.

The main objective of the new provision is to prevent the tenant from being placed at a disadvantage following a change in ownership. The new regulation may constitute a burden for former owners, as the way to fulfil their joint obligations as landlord is not clearly established.

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