

The Brief

February 2013

Hungary - Monthly legal update

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PUBLIC LAW

National Mobile Payment System to Start Soon

As of 1 April 2013, online and mobile payment for public services will be exclusively managed by State-owned company Nemzeti Mobil Fejlesztési Zrt. ("**NFM**"). Although the Parliament decided to reserve the exclusive right to provide mobile payment services to a State-owned entity back in 2011 by adopting Act CC of 2011, the Hungarian government has only recently issued the related implementation decree, which details the applicable legal framework and designates NFM to manage the mobile payment system.

The new mobile payment scheme of public services (i.e. the national mobile payment system) has been designed to grant similar development opportunities in mobile sales for all public services, as well as equal accessibility for all customers anywhere in Hungary. The new scheme intends to reduce the number of abusive cases and the share of black market transactions. The official explanation of Act CC of 2011 also emphasizes that the new system increases the negotiating power of public utility companies against companies involved in the resale of services to customers.

Offering payment methods through the national mobile payment scheme will be mandatory for city parking, toll roads and public transport operators. Other State and municipality services are not yet covered by the obligation to enable payment by phone or online. However, if such payment is made available, the national mobile payment system must be used.

According to the Hungarian government, the price of the services available through the national mobile payment system will be the same as if they were purchased otherwise. However, customers must pay an additional "comfort fee", which it is promised will remain lower than the similar fees currently applied.

Attractive Immigration Opportunity for Foreign Investors

On 11 December 2012, the Hungarian parliament adopted Act CCXX of 2012 modifying the applicable regulation in force on immigration law, which is likely to attract the attention of investors from third countries (non-EU member states). Unlike the former legislation, which provided for quite severe rules for obtaining a temporary residence permit for business purposes, the new regulation offers permanent residency in Hungary for third-country nationals under preferential conditions.

According to the new provisions, any private person investing an amount of EUR 250,000 in residency bonds guaranteed by the Hungarian State will be entitled to acquire a residence permit, with no requirement for the applicant to live permanently in Hungary. The residency bond can be purchased by third country nationals as private individuals, or through a commercial company in which they have controlling majority. The residency bond will be denominated in Euro and will be valid for at least 5 years.

Under the preferential criteria, following the purchase of residency bonds a temporary residence permit will be issued to the investor. This "preferential" temporary permit will then be converted into a permanent residence permit after six months, instead of the three years applicable in the case of non-preferential permits. This is the 'benefit' offered in exchange for the investment, with the purpose of encouraging capital inflows from third countries. Hungarian permanent residence permits ensure foreign nationals limited mobility within the EU, entitling their holder to a maximum stay of up to 90 days every 6 months in any other Member State.

It is important to note that general criteria to enter Hungary must also be met for individuals applying for preferential permits such as having valid travel documents, necessary permits for return or continued travel, justification of the reason for entry and stay in Hungary, accommodation or a place of residence in Hungary, sufficient financial means to live in Hungary and for continued travel, full healthcare insurance, justification that the third-country national is not subject to expulsion or exclusion, is not considered to be a threat to public policy, public security or public health, or to the national security of Hungary, and for whom no alert has been issued to refuse entry.

In comparison with business immigration opportunities offered by other EU Member States - often requiring permanent residency, language knowledge or other specific criteria - the Hungarian regulation seems to be less restrictive and, as such, more attractive to foreign investors.

TAX LAW

Requirement for Itemized VAT Return Increases the Administrative Burden of Companies

Due to recent modifications to the Act on the Rules of Taxation, as of 1 January 2013 Hungarian companies are obliged to file itemized VAT returns, reporting invoices issued and received in relation to domestic transactions for every single business partner, where the amount of the charged VAT exceeds HUF 2 million in a given tax period.



Accordingly, taxpayers must report in detail:

- the tax number of the partner,
- the serial number of the invoice,
- the tax base and the re-charged VAT shown on the invoice,
- the date of completion shown on the invoice or, in the absence of such date, the date of issuing the invoice.

Itemized invoice listing shall be submitted electronically.

The new reporting obligation imposes a significant additional burden on taxpayers since it concerns several economic events even regarding medium-size companies, not to mention that due to manual data entry the preparation of itemized returns is likely to be time-consuming. In addition, taxpayers may not simplify the data entry by listing all invoices of the company, including those where the charged VAT does not exceed the determined threshold. The main concern related to incorrect data entry is that the tax authorities may impose a default penalty on the company.

Developments regarding the Proposed Swiss-Hungarian Tax Treaty

According to the Hungarian Prime Minister's Office, a work committee has been created with the aim of reaching an agreement with Switzerland on the issue of taxing the assets held by Hungarian individuals and entities on Swiss bank accounts. As Switzerland is ready to open formal negotiations with Hungary, the intention of the Hungarian government to reach an agreement before 2015 may be realistic.

It was also announced that the Hungarian government would start negotiations with other countries such as Liechtenstein and Cyprus.

Preferential Customs Duty Rates by tariff suspensions and quotas - closing deadline

Please note that the deadline for filing requests on tariff suspensions and quotas applicable from 1 January 2014 is 25 February 2013.

The main purpose of tariff suspensions is to enable EU enterprises to use raw materials, semi-finished goods or components without being required to pay the normal duties laid down in the common customs tariff. Tariff quotas permit, during the period of validity of the measure and for a limited quantity, total or partial exemption of the normal duties applicable to imported goods. Thus, applying for tariff suspensions and quotas is a good opportunity to lower the customs duty burden of importers and maximize their profits.

Modifications to the Stamp Duty Act

Several amendments have been made recently to Act XCIII of 1990 on stamp duties, most of which entered into force on 1 January 2013. Please find below a brief summary of some of the main modifications:

- The previously tiered category system of the stamp duty to be paid on inheritance and gifts has been abolished and replaced by a single general rate of 18 per cent and 9 per cent on the acquisition of residential properties and pecuniary rights related to residential properties.
- Besides the previously existing exemptions from stamp duty due on inheritance (e.g. inheritance of the deceased's next of kin), the deceased's surviving spouse is now also exempted from paying any stamp duty on any inheritance received from the deceased spouse, irrespective of the amount of such inheritance.
- Prior to 1 January 2013, in the event of exchange of residential properties, or of buying a residential property within one year of selling one, the person carrying out the transaction was subject to paying a proportioned stamp duty applicable on the difference between the amounts paid for selling and purchasing the residential properties. However, according to the new regulation, the obligation to pay stamp duty only arises if this difference is positive. (Please note that this allowance is only applicable to private individuals.)
- The allowance in respect of the first acquisition of a residential property has also changed: prior to the new modification, young adults under the age of 35 were entitled to an allowance of 50 per cent (but maximum HUF 40,000) on the stamp duty otherwise payable if the market value of the entire residential property acquired did not exceed HUF 8,000,000. However, the stamp duty amendment increases the market value of eligible residential properties to HUF 15,000,000, with the previous allowance threshold of HUF 40,000 being abolished.
- The amount of the stamp duty payable for bankruptcy and voluntary winding up proceedings was also modified:
 - voluntary winding up proceedings of companies having legal personality must pay stamp duty amounting to HUF 80,000 (compared with the previous HUF 50,000);
 - bankruptcy proceedings of companies having legal personality must pay stamp duty amounting to HUF 50,000 (compared with the previous HUF 30,000);



- voluntary winding up proceedings of companies not having legal personality must pay stamp duty amounting to HUF 30,000 (compared with the previous HUF 25,000);
- bankruptcy proceedings of companies not having legal personality must pay stamp duty amounting to HUF 30,000 (compared with the previous HUF 20,000).

EMPLOYMENT LAW

Problems in Connection with the Calculation of the Newly Introduced Absence Fee

The New Labour Code introduced the new concept of "absence fee" as a basis for calculating remuneration for periods during which the employee is exempt from performing work (e.g. paid leave). The new calculation method entered into force on 1 January 2013, and the issues it raises emerged recently as a hot topic on many online employment law forums.

The issue was first raised by the National Association of Hungarian Tax and Accounting Service Advisors. The Association pointed out that by applying the new absence rate rules, employees remunerated on a monthly basis may receive a salary which is different from the gross amount set out in their employment contracts depending on the date of taking their holidays. The more working days there are in the month in which employees take their holidays, the higher their remuneration will be. In other words, employees taking holidays in February may earn significantly less, and accordingly those going on holiday in January may receive higher remuneration than that agreed with the employer and stated in their employment contract. If holidays are allocated proportionally to the months - which is not necessarily the case - remuneration differences with the salary indicated in the employment contract may offset each other. Under the previous calculation method, the same amount of gross and net salary was granted to the employees each month, regardless of the number of holidays approved in a given month.

The New Labour Code provides detailed rules for the calculation of holiday remuneration (absence fee), however it does not set out explicit calculation rules for the salary due for the days worked in the given month. The lack of clear statutory rules regarding the calculation method leads to different interpretations. According to the opinion of some recognized labour law experts, the salary due for days worked in the given month should be calculated according to the same rules as the salary due for the holiday period, i.e. deriving from the hourly base unit. However, the official position of the Ministry of National Economy issued in February 2013 takes the opposite stand by stating that the calculation shall be based on daily base units and adjusted to the number of working days in the given month.

Notwithstanding that collective agreements (for the benefit and for the detriment of the employee) and employment contracts (only for the benefit of the employee) may deviate from the above absence fee calculation rules, employees cannot be reassured regarding the confusion surrounding the remuneration of time worked during a given month.

Since it is a direct result of the statutory rules, such discrepancies in employees' monthly salaries cannot be considered as unlawful. However, in the case of employees on the minimum wage, such salary fluctuations may result in a situation where their actual remuneration falls below the minimal wage. Additionally, such salary fluctuations may be unmanageable for those on irregular work schedules.

It now seems likely that legislative measures will be implemented to clarify and interpret the calculation method, thereby resolving the above controversy.

EUROPEAN LAW

A New European Patent System to be Born

- Background

After almost thirty years of debates, the new Unitary Patent system of the European Union is finally taking shape. Twenty-five Member States of the European Union have decided - in the context of "enhanced cooperation" - to create a single patent ("**Unitary Patent**") valid in all EU countries, with the exception of Spain and Italy. Enhanced cooperation is a special procedure allowing EU Member States to attain an objective even if some Member States do not wish to participate. The procedure requires the approval of both the Council of the EU and the European Parliament.

Both institutions granted their approval in December 2012, there were therefore no longer any institutional obstacles for the creation of the Unitary Patent. Nonetheless, Italy and Spain, who opted out of the system primarily due to issues of language, have challenged the enhanced cooperation process before the European Court of Justice ("**ECJ**"). Last December the advocate general in charge of the matter provided a non-binding opinion rejecting that challenge, and the ECJ will most likely follow this opinion.

The new patent scheme would remedy the current country-by-country approach when applying for a patent in the participating EU Member States, thereby reducing the costs (EUR 4,725 compared with the current EUR 36,000) and time of administrative procedures.

- Unitary Patent

The Unitary Patent will ensure automatic and uniform patent protection within the territory of all participating Member States. It will be available on a one-stop shop basis and granted by the European Patent Office ("**EPO**").



It is to be noted that the Unitary Patent will co-exist with national patents granted by national bodies and with the "classic" European patent also granted by the EPO.

Patents would be made available in English, French and German and applications would have to be made in the same languages. If filed in another language, the applications must also be accompanied by a translation into one of these three languages.

- Unified patent litigation

The Unified Patent Court ("**UPC**") will be the future centralised patent jurisdiction of the participating Member States. It will have exclusive jurisdiction in respect of civil litigation related to infringement and validity of both Unitary Patents and "classic" European patents.

The UPC will comprise a Court of First Instance and a Court of Appeal. The Court of First Instance itself shall have central, regional and local divisions. Local divisions shall be set up within the territory of the Member States. The regional divisions shall cover the territory of two or more Member States.

The central division of the Court of First Instance shall have its seat in Paris with sections in London (biotechnology) and Munich (mechanic and automotive sector). The Court of Appeal shall seat in Luxembourg. A Training Centre for judges will be created in Budapest.

All instances of the UPC will be subject to EU law and entitled to refer questions to the ECJ on the interpretation of EU law.

- Next steps

The Unitary Patent package shall be applied as of 1 January 2014 or on the first day of the fourth month following the filing of the thirteenth ratification of the agreement creating the UPC, provided that the United Kingdom, France and Germany are among them.

In practice, this means that the first Unitary Patents will most likely be granted late 2014 or early 2015. Although the UPC itself will be set up at the same time, during a transitional period of seven years it will be possible to opt out of its jurisdiction and stipulate the jurisdiction of another court. However, the unified patent litigation system is expected to become mandatory for patent applications filed in 2022 or later.



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