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TAX AND LEGAL

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LAW SHOOTER

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WINTER EDITION

Firstly as an early holiday gift, we are holding a free of charge internal seminar on the 11th of December, 16:00 o'clock at our office on the New Civil Code to which you are warmly invited!

Secondly, as always, this month's newsletter is filled with interesting legal articles on topics such as the changes of prevention and combating of money laundering and terrorism financing, as well as entering, staying and working conditions in Hungary in case of Third country nationals.

As this is our last newsletter for the year, BWSP Gobert and Partners wishes you and your family a wonderful holiday! Should you have any questions regarding any of the articles in our newsletter, feel free to contact us anytime.

Dr. Arne Gobert
Managing Partner

CONTENTS

CHANGES OF THE ACT CXXXVI. OF 2007 ON THE PREVENTION AND COMBATING OF MONEY LAUNDERING AND TERRORISM FINANCING (PMT.) AND CERTAIN OTHER ACTS PERTAINING TO FINANCIAL ORGANIZATIONS

On the summer of 2013, the Act LII of 2013 („Amendment") has significantly amended the Act CXXXVI. of 2007 on the Prevention and combating of money laundering and terrorism financing (Pmt.) and certain other acts pertaining to financial organizations.

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In our newsletter we would like to illustrate the provisions of the Amendment worth considering, the description of the full or even partial content of the Pmt. as after the Amendment have taken effect requires a specific task.

I. The objective of the Act:

The objective of the Act has not been altered, it is still „*to effectively enforce the provisions on combating money laundering and terrorist financing with a view to preventing the laundering of money and other financial means derived from criminal activities through the financial system, the capital markets and other areas exposed to potential money laundering operations, as well as to help combat the flow of funds and other financial means used in financing terrorism*."

II. The scope of the Act:

The Act continuous to apply to the financial institutions, thus inter alia to credit institutions, insurance companies, investment services, voluntary mutual insurance fund services, etc.

III. Authority operating as national financial intelligence unit

The amendment names the authority operating as national financial intelligence unit, which is the department of the National Tax and Customs Authority appointed under specific legislation.

IV. New rules, which are worth to be noted

The Amendment introduces new rules pertaining to the:

(i) beneficial owner;

(ii) determination of the customer and the business relationship;

(iii) definition of the money laundering and terrorism financing;

(iv) determination of the foreign authority operating as national financial intelligence unit (see point III.);

(v) determination of the person entrusted with prominent public functions;

V. Extra obligations and entitlements of the service provider

The Amendment has significantly expanded the scope of the entitlements and obligations pertaining to the service provider during the customer due diligence measures.

Examples of such obligations and entitlements are as follows:

(i) The new obligation of the service provider is that if the customer during the establishment of the business relationship or service receiving acts by proxy, the service provider is obliged to proceed in the interest of the monitoring of the validity of the assignment.

(ii) In certain justified cases the service provider is obliged for monitoring from the data records pertaining to the identification in justified cases.

(iii) The service provider is entitled in certain justified cases to require from the natural or legal person beneficial owner additional data, whether the beneficial owner is regarded to be politically exposed person. These additional data the service provider may request from the person acting on behalf of the beneficial owner or the customer, or may record it based on the publicly accessible records.

(iv) the service provider during the fulfilment of its customer due diligence obligations may request the provision of the information pertaining to the source of funds, or in certain specific cases may subject the establishment of a business relationship, or the fulfilment of the transaction to the approval of the director of the service provider.

(v) in justified cases the service provider conducts in the procedure - for the monitoring of the transaction relationship - determined, confirmed internal rules and in justified cases is obliged to pay attention to every complex and unusual transaction.

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(vi) The service provider is obliged to customer due diligence even in the case when the fee of the transaction does not reach three million six hundred thousand forints in one transaction, but more interconnected transactions reach the above amount.

In the interest of the fulfilment of the obligation mentioned in V.(vi), the banks are obliged to record additional data of the customers, in case the customer is initiating cash transfer, or fulfils cash payments in the amount exceeding three hundred thousand forints.

For the fulfilment of the same obligation, the insurance companies are obliged to record extra data, if the customer is fulfilling the cash payment above the expected fee.

It is not a new regulation that in case the customer has not appeared before the service provider, it must send its identification documents in a form prescribed in the Pmt, particularly via confirmatory certification of the document provided by a consulate officer.

The Amendment eased this rule provided that if the customer, who wishes to open customer account, security account or security deposit account defined in the Act CXX of 2001 on the capital market, instead of the above obligation, may send its identification documents to the service provider via fax or electronic way.

VI. Reporting obligation:

The Amendment had modified the rules pertaining to the reporting obligation of the service provider.

Such rule is for example that the service provider is obliged to designate a person within five working days following the commencement of its operation, who forwards the incoming report.

VII. The power of the National Tax and Customs Authority (NAV)

As being the authority operating as the national financial intelligence unit, the scope of the NAV's tasks and powers have been expanded.

Also the obligation for cooperation between the service providers and authority operating as national financial intelligence unit has been extended, and similarly the obligation for cooperation of the authority opretaing as national financial intelligence unit and investigating authority, furthermore the foreign financial intelligence unit.

VIII. „Money laundering policy"

It is also a new rule that the organ supervising the service provider is obliged to revise every two years the internal policy prepared obligatorily by the service providers,

IX. Supervisory penalty

The maximum amount of the penalty imposed by the supervisory organ in case of banks, investment service providers, insurance companies, commodity exchange service providers, the service providers accepting and delivering international postal money orders, voluntary mutual insurance fund service providers has increased from HUF 50 million to HUF 500 million.

X. December 31, 2014 as a new deadline!

New rule is also that the service providers following December 31, 2014 are obliged to reject the fulfilment of the transaction if:

(i) they established business relationship with the customer before July 1, 2013,

(ii) the customer has not appeared before the service provider personally or through a proxy for the purpose of customer due diligence

(iii) the results of the customer due diligence in respect

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of the customer are not fully available on December 31, 2014.

The Amendment has modified several important public law acts, out of which we mention the below:

1. Act XCVI of 1993 on Voluntary Mutual Insurance Funds has been modified in a way that the fund may hand in the business and fund secrets in the case, if:

(i) the burden of the reporting obligation defined in Pmt. is on the fund, or if

(ii) the fund fulfils the written query of the Hungarian or the foreign authority operating as the financial intelligence unit.

2. Act CXII of 1996 on Credit Institutions and Financial Enterprises has been modified in a way that there is no obligation for keeping the bank secret in the case, when:

(i) the financial institution fulfils its reporting obligation defined in the Pmt.

(ii) when the law enforcement agency makes written request for information that is considered bank secret,

(iii) if the financial institution fulfils the written query of the Hungarian or the foreign authority operating as the financial intelligence unit.

3. Act LX of 2003 on Insurance Institutions and the Insurance Business has been modified in a way that there is no obligation to keep the insurance secret in a case if:

(i) when the law enforcement agency makes written request for information that is considered insurance secret,

(ii) *if the insurence company* fulfils the written query of the Hungarian or the foreign authority operating as the financial intelligence unit.

4. Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities have been modified in a way that there is no secrecy obligation towards the authority operating as financial intelligence unit.

5. Act XCII of 2003 on the Rules of Taxation have been modified in a way that there is no tax secret int he case, when the the Hungarian or the foreign authority operating as the financial intelligence unit queries the data with direct access, or requests the data from the tax authority via written query.

6. Act CLVIII of 2010 on the Hungarian Financial Supervisory Authority have been modified in a way that the Authority conducts the supervisory tasks defined in the Pmt in respect of the financial institutions pertaining under its supervision. Currently, it is the Hungarian National Bank carrying out these supervisory tasks on the basis of Act CXXXIX of 2013 on the Hungarian National Bank, which repealed the Act CLVIII of 2010.

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ENTERING, STAYING AND WORKING CONDITIONS IN HUNGARY IN CASE OF THIRD COUNTRY NATIONALS

Short term stay (not exceeding the 90 days period)

Nationals of countries listed in the *539/2001 EC council regulation Annex II.* („**Visa-free nationals**") may enter Hungary without a visa, however nationals of countries not listed in the council regulation/countries under visa obligation („**Visa nationals**") - even if they are family

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members of EU/EEA citizens - will need to apply for a visa or a residence permit before entering Hungary (Visa free nationals and Visa nationals collectively: „**Third country nationals**"). Visa-free nationals and Visa nationals entering Hungary with a visa are entitled to stay in Hungary only for 90 days.

Entry for long stay (period exceeding 90 days)

Third country nationals intending to stay in Hungary for more than 90 days shall apply for a residence permit. The type and the validity of the residence permit depends on the purpose of stay. The resident permit may be issued for the following purposes: visitation, gainful activity, education, family reunification, medical treatment, research work, voluntary activity or official purpose. In case the stay does not fall in the categories above, it may be issued for another purpose. To obtain such a residence permit the applicants shall prove not only the purpose of their stay, but also their livelihood, housing and all inclusive health insurance. Usually the residence permit may be issued for a maximum of two years, but after this period it can be renewed for two further years.

Third country nationals are entitled to become a permanent resident of Hungary, after a five-year period of uninterrupted legal residence in the territory of Hungary.

Working in Hungary

Third country nationals – except family members of EU/EEA citizens - may only work in Hungary based on a permit. The work permit may be issued if the employer has a valid labor need in relation to the activity to be performed by the applicant. Once issued, the work permit is valid for a maximum of two years, but it can be renewed for an additional two-year period.

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FUSIONS HAVING NATIONAL STRATEGIC IMPORTANCE – COMPREHENSIVE AMENDMENT OF THE COMPETITION ACT

The purpose of the the amendment of certain statutory provisions related to the Act on the Prohibition of Unfair Trading Practices and Unfair Competition (hereinafter: Competition Act); furthermore, to the procedures of the Competition Authority (GVH) coming into force recently is to create a more transparent, modern Competition Act, which follows the EU legal development.

According to the former regulations on the merger of companies, authorization from the GVH had to be required if the combined net sales revenue of all groups of companies involved and the net sales revenues of the companies controlled jointly by members of the groups of companies involved with other companies, in the previous financial year exceeded HUF 15 milliard and among the groups of companies involved, there are at least two groups with net sales revenues of HUF 5 hundred million or more in the previous year together with the net sales revenues of companies controlled by members of the same group jointly with other companies.

Based on the independent motion of the members of the parliament attached to the act proposal pertaining to the amendment of the Competition Act, the Government will receive authorization to declare the above merger subject to approval as having national strategic importance with decree from public interest, thus particularly to preserve jobs, to strengthen competitivness of a given sector, for the security of the supply. Mergers declared to have national strategic importance from public interest, will now be exempted

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from the authorization of the GVH.

Further purpose of the amendment was to make the merger-surviallence provisions more efficient, transparent and predictable in a way that the GVH still has adequate and efficient means against companies not observing the rules pertaining to authorization of the merger.

According to the former regulations, if for the acquisition of a company the competition authority's permission was needed, the transaction could be completed – at own risk - before granting the approval. Thus if the authority subsequently did not grant the authorization, it was hard to restore the original status. The new act; however, made it unambiguous that until obtaining the permit, the merger may not be executed, in other words the management rights cannot be excercised. At the same time, now beside the ban on execution, there is possibility that upon individual request, the proceeding competition comittee - considering the circumstances - consents to excercising the management rights before acquiring the permit, if it is mandatory for the regular operation of the business and to preserve the value of the investment, provided that in case of an order prohibiting the merger the original situation may be restored.

In cases connected to cartels, abuse of dominant position, the new act corrects the rules providing possibility to remit or reduce penalty, namely the rules of the so called leniency policy for enterprises operating voluntarily in revealing, prooving cartels. The special settlement procedure, which is a new legal institution, which is applicable, if the infringer acknowledges his action, its legal consideration and the penalty; moreover, will waive of his right to legal remedy. This way the client can calculate with a penalty reduced by 10 percent, because this way the litigation, which can take up to years can be avoided and the quick closure of the case is much more favorable from the perspective of the competition authority.

The new act rearranges the rules pertaining to the control, review, access to personal data and certain other data having protection upon the law. The aim of the amendment is that the Competition Act now regulates the data controlling in compliance with the act on the general rules on the administrative proceedings and services (Ket.) and the act on the right of informational self-determination and on freedom of information (Infotv.).

In the interest of revealing cartels, aggressive, unfair commercial practices to consumers, conducted expressly through means of telecommunication, the GVH receives statutory authorization to access certain personal data regarding communications. Accordingly, the act on electronic communications is amended in a way that the service provider is obliged in certain cases to disclose beyond the personal data of the subscriber involved in the procedure, the phone numbers of those, who he had called up, the date, duration of phone calls; furthermore, the cell info in case of mobile phones and the unique identifier of the telephone to GVH.

As regards trade secrets, formerly to declare a data as a trade secret, it had to be required from the authority; however, the consent of the authority could infringe the right of the adverse party for legal remedy, because he was not aware of that information. According to the new act, the data administrator declares it to be trade secret and will remain as such until the proceeding competition committe does not deprive it of such character, upon request. If the competition committee permits the adverse party to come to know the trade secret, he may review those only after the permitting order had become final.

For the sake of transparent regulation, the new Competition act incorporates the regulations pertaining to the prohibition of unlawful, misleading and comparative advertising of the act on the basic requirements and certain restrictions of commercial advertising activities (Grt.), further the rules of the procedure of the court and competition authority pertaining to these, which according to the reasoning

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simplifies the legal application.

The new act contains beside the modification of certain particular procedural rules — being necessary as a consequence of the international competition and European Union developments and the experiences of the GVH's legal application practice -, the corrections of the rules in connection with the proceedings connected with the application and the complaint.

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ARTICLES TO LOVE
ON THE LEGAL PITFALLS OF A WEDDING V.

Wedding gift and bridal dance

A lot of times arises the question that who is entitled for the wedding gift. Particularly in case of a bridal dance may occur in the brides head the thought that taking into view that „she worked for" that amount, than this allotment would be hers in its entire extent .

It is a mistaken assumption, because judicial practice is uniform in respect of the wedding gift and bridal dance from the aspect that they are usually considered as being the elements of the common property, but in the present case it is also important to deliver all circumstances related to donating. With reference to the facts stated in accordance with the marital property contract, the amount handed over in cases of the wedding gift and the bridal dance from the perspective of the donating intention, is aimed at making easier the beginning of the young couples common future. From this perspective, the Donors' statement also needs to be taken into consideration, they are regarded as the couples common property.

However it is also possible that the family relative only wants to present his own relative with a piece conveyed traditionally at weddings at the family, thus with regard to the donors' intent, it will constitute a part of the donee's separate property.

Rules on name-bearing

We may hear a lot about the current customs on name-bearing from our acquaintances, but lets review from which statutory name-bearing opportunities we may choose.

Parties to the marriage contract have to make a declaration on the name bearing following the conclusion of the marriage during the Registrar's procedure.

We present the options regarding the name bearing through a simple example below. The wives maiden name is „X Ilona", the husbands name is „Y László".

The wife may choose from the following forms of name bearing:

- the wife may decide to keep her own maiden name unchanged and she will remain – „X Ilona";
- the whole name of her husband with the suffix "-né" referring to the marriage, to which she may attach her whole maiden name – "Y Lászlóné X Ilona";
- or her husband's family name with the suffix "-né"referring to the marriage, to which she attaches her whole maiden name – "Yné X Ilona";
- or her husband's family name to which she attaches her first name – "Y Ilona".

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The husband may choose from the following forms of name bearing:

- the husband may decide that he will bear exclusively his own name after the marriage – „Y László“
- or he will attach to his wifes family name his own first name – „X László“

The husband or the wife may choose a married name following the marriage contract, with which they combine their family names, and to this they attach their first name – „Y-X László“ and „Y-X Ilona“. The combined family names may be at most binominal.

Important rule is, that the married name may not lead to the interchange of the spouses family name, that is, only one party to the marriage may take the other persons family name.

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AMENDEMENT OF THE DUTIES ACT FROM JANURAY, 2014

According to the tax law proposal put forward to Parliament on 18 October, 2013 the substantial changes of the Act XCIII of 1990 on Duties (Duties Act) effective as of the 1st of January 2014 are the following.

Scope of exemption from gift duty will be extended

The gift received by the spouse of the presenter, the property acquired from the termination of marital community of property, and the remitting of dividend receivables shall be exempt from gift duty as well as the receivables remitted free of charge as part of a bankruptcy agreement or a liquidity procedure in order to support the continued operation of a company threatened by bankruptcy or undergoing liquidation provided that not the member is entitled to the receivable in question.

Extension of the scope of exemption from duty in the case of property acquisition

Pursuant to the proposal, from the 1st of January 2014, the property acquisition from the transfer of property between spouses and from the termination of marital community of property would be exempt from the duty on onerous transfer of property.

Extension of the relief of free-of-charge instalment payment of duty on onerous transfer of property

The relief of a 12-month free-of-charge instalment payment of the duty on onerous transfer of property will be available to any person acquiring his first residential property requesting the application of this relief from the state tax authority under the age of 35 but to any person.

Easement of rules certifying fulfilment of duty exemption conditions in the case of the construction of residential buildings

The proposal eases the rules on the certification of the fulfilment of the conditions for exemption from inheritance and gift duty and the duty on onerous transfer of property applicable for the acquisition of land suitable for the construction of a residential building by providing that the state tax authority shall also cancel the suspended duty if the use permit certifying the completion of construction or the authority document certifying the acceptance of use are not issued to the name of the taxpayer but to the co-owner or to the name of the party entitled to the property rights relating to the property.

If at least one of these conditions is not fulfilled, the duty exemption may not be applicable.

Conditions for exemption from duty on onerous transfer of property will be more stringent

The duty exemption available in the case of acquisitions of movable property not subject to duty on onerous transfer of property by business organizations in the form of a free-of-charge asset transfer, the presenting of receivables between business

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organizations, beneficial transformations, beneficial shareholding exchanges and onerous transfers of property between related parties may only be applied if the acquirer of the property is registered in a state

- in which the quotient of the tax equivalent to corporate tax and the tax base reaches at least 10 percent, or
- in which the lowest statutory rate of the tax equivalent to corporate tax reaches 10 percent if profit and the tax base are zero or negative, or
- in which the income from the sale of shareholdings is subject to at least a 10 percent tax equivalent to corporate tax.

If at least one of the above conditions is not fulfilled, no duty exemption may be applied.

Re-regulation of the definition of company owning internal real estate, furthermore the duty obligation of the acquisition of financial contributions to such companies

A company is regarded as a company owning domestic real property if at least 75 percent of the real estates recognized in its financial reports are Hungarian properties or if the company holds at least 75 percent participation in a business organization with an over-75-percent ratio of domestic real properties within the assets recognized in the balance sheet. The provision, according to which the acquisition of a contribution in a company owning domestic real property is only subject to a duty in the case of companies performing specific main activities, will be repealed. Accordingly, the acquisition of property in a company owning domestic real property will be subject to a duty irrespective of the main activity of the company.

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