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# LAW SHOOTER

**June 2013**

## START THE SUMMER WITH USEFULL LEGAL UPDATES

Although the summer season is about to begin, we at BWSP Gobert and Partners find it important to keep you constantly informed with the most important legal updates. In this month's edition, we will continue our article on changes in the common provisions of insurance contracts, by stating the changes in property and life insurance. Amongst others, a further interesting article by one of our Partners deals with the rules of invoicing. Should you have any questions regarding the material provided, please do not hesitate to contact us.

*Dr. Arne Gobert*  
Managing Partner

## RULES OF INVOICING HAVE BEEN AMENDED IN 2013!

As from 1 January, 2013 the provisions of the Act CXXVII of 2007 on Value Added Tax (hereinafter: VAT Act) pertaining to invoicing, in line with the Council Directive 2010/45/EU amending the rules on invoicing of the Directive 2006/112/EC on the common system of value added tax have changed significantly.

As a result of the harmonization of laws, the requirements - from which the most important we summarize below - pertaining to paper and electronic invoicing, have been unified.

### I. Requirements equally governing the paper and electronic invoicing

According to the new supplement of the VAT Act – Section 168/A. (1) – ***the integrity of content, authenticity of origin and readability of the invoice shall be secured from the issuance of the invoice continuously throughout the entire period of preservation.*** The “authenticity of origin” means insurance of the identifiability of the product supplier, service provider and the party issuing the invoice. Accordingly, the person, who de facto supplied the product or provided service, should be indicated on the invoice as a supplier. Pursuant to the “integrity of content” the data content of the invoice may not be altered.

However, certain taxable persons determine how they ensure the authenticity of origin, integrity of the content and readability of the invoice themselves.

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The above provision is not a new obligation, but in connection with it - in addition to defining the meaning of the authenticity of origin and integrity of data content - the VAT Act from first of January 2013 has been complemented with a framework rule on fulfilling such obligation. Pursuant to this framework rule (Section 168/A (2)) the above requirements **may be achieved by any business control procedure, which creates a reliable audit trail between the invoice and a supply of goods or services**. The conditions for the authenticity of the origin and the integrity of the content have to be met by the issuer and the recipient of the invoice as well, which conditions in certain cases the Parties may ensure independently from each other.

The business control procedure defined in Section 168/A. § (2) of the VAT Act covers a broad concept, the objective of which is the proper issuing of the invoices. An invoice is correct by its content (appropriate transaction, appropriate taxable person, appropriate consideration, appropriate payment recipient), if certifies the assumption that during its issuance has not occurred any mistake related to the authenticity of origin or the integrity of the content, namely that the invoice has not been forged or changed any other way, and the invoice is in compliance with the performed transaction.

The taxable person may choose the procedure freely, during which it controls, particularly whether:

1. – the invoice is appropriate in essence, the transaction indicated in the invoice, has been fulfilled in the actual quality and quantity;
2. – as the receiver of the invoice examines, whether the issuer of the invoice has indicated the actual demand for payment.
3. – the bank account number given by the issuer on the invoice is proper and actually settles only those invoices, for which receiver is obliged for.

The point of the business control procedure is that the invoice is examined within the business and accounting process, not as an independent, individual document.

This can be done even within the framework of book-keeping, thus for example: by using integrated business management, or by comparing the invoice with the

available business documents (order, assignment, contract, bill of delivery, and transfer or payment certificate).

Apart from the fact, that the business control procedure is not examining the compulsory conditions of the right to deduct VAT, it should be emphasized that taxable persons are still required to certify properly the existence of the conditions of the enforced deduction right.

#### Electronic invoice

Simultaneously with Section 168/A. of the VAT Act coming into effect, the provisions governing the electronic invoice are changing as well. According to the Vat Act, **any invoice shall be considered as electronic invoice, if contains all data stipulated by law, and which has been issued and received through electronic way.**

We draw the attention to the fact, that the receipt of the electronic invoice and insurance of the authenticity, integrity and readability has technical conditions on the side of the product and service receiving party and which need to be elaborated for the receipt of the electronic invoices as well.

According to this, the provision defines, that the condition of the issuance of the electronic invoice is the approval of the invoice receiver and in case of using the EDI system, the prior written agreement of the parties.

From a technical perspective the compliance with 'VAT Act' and the requirements related to the abovementioned invoices' authenticity and integrity of the data content, might be ensured as follows:

- a. - Pursuant to the Act XXXV of 2001 on electronic signatures (hereinafter: Eat.), the electronic invoice is provided with qualified electronic signature; or
- b. - created and forwarded as EDI electronic data.

The taxable person may ensure the readability of the electronic invoices in any manner chosen by him, but taxable persons receiving such invoice have to take into consideration that according to Act XCII of 2003 on the rules of taxation (hereinafter: Art.), data stored on



electronic data medium have to be provided upon request to the tax authority in a determined format. Such invoices have to be provided to tax authorities in one of the following formats:

Txt format (text file)

Any other, so called print file format, which is not containing formatted text or characters, furthermore instructions may not be found in the file and the content of the file can be clearly made equivalent to the printed data, or

Csv, or dbf, or mdb, or xls, or xml file format

Based on the information released by the tax authority, in the case of an invoice issued by advanced signature and a timestamp provided by qualified provider, the compliance with the conditions pertaining to the authenticity of origin and the integrity of content may be presumed according to the provisions of the Eat., whilst in relation to the invoice issued by timestamps provided by at least advanced electronic signature and qualified provider, the requirements pertaining to the authenticity of origin and integrity of the data content are fulfilled.

The VAT Act does not contain provision on the application of a timestamp, conclusively the application of a timestamp is not a requirement, but of course may be used based on the decision of the taxable person.

According to the definition of the electronic invoice under Section 259 point 5 of the VAT Act, the **pdf file sent or received through email is considered as electronic invoice as well** in application of the act.

It has to be noted that the electronic invoices, which are forwarded via e-mail are considered at least secure ones from data-protection aspects among all electronic invoices; thus in the matter of such electronic invoices the authenticity of origin and the integrity of the data content corroborated by business control has an advanced importance, must be executed in a strict sense.

Invoices created on a paper form, and simultaneously issued also as electronic invoice, the provisions of the IHM Regulation on the rules on making electronic copy of the paper based documents shall be taken into

consideration as well.

#### Obligation to preserve the document

The VAT Act is continuously prescribing as a requirement that every taxable person or organization, who exercises any right governed in the Act, or who is subject to any obligation conferred by the VAT Act, should ensure for the tax assessments' complete and correct monitoring, that the documents **issued by himself, or in his name and all the documents which he is in possession of, or are at his disposal in any other manner, are stored until the right of tax assessment expires.**

However, the rules on the retaining obligation have been partly amended. It is important to bear in mind that in the case, if the taxable person is preserving the documents electronically, the data created in the course of the business control, or the data used for the business control has to be preserved electronically as well.

In the case of data preserved in electronic format, the provisions of the GKM Regulation on the rules of digital archiving, needs to be taken into account, which is setting separate rules for the preserving of the invoices provided at least with advanced electronic signature, invoice not provided with such signature and for invoice forwarded in the EDI system.

According to the VAT Act, Section 179 (2), effective from first of January 2013, the obligation for preserving may be fulfilled by preserving the paper based document electronically. In connection with this provision it should be emphasized that the requirements governing the invoices authenticity of origin, readability, integrity of data content in Section 168/A (1) of the VAT Act, should be ensured throughout the preservation period.

Thus making an electronic copy of the document available in a paper based form, might be done only in a manner, which is not jeopardizing the integrity of the data content and readability. That is, whilst making a copy, the provisions of the IHM Regulation have to be preserved.

Furthermore, Section 179 (2) effective from first of January 2013 is stipulating, that an electronic document might be



preserved (still) only in electronic form, however electronic invoice may not be preserved exclusively in a form, the taxable person has issued or received it, provided that the change of the electronic documents' format has happened according to the requirements stipulated in the VAT Act, Section 168/A, namely the authenticity of the origin, integrity of data content and readability was ensured continuously.

Within the scope of compliance with the preservation obligation, the pertaining provisions of the Art. have to be taken into account, namely the taxable person has to report his documents, the place of preservation of certificates and records available in electronic based form, if it is not identical with the taxable persons seat or domicile, or if the taxable person, preserves the invoice, book, record electronically, ensuring online access, the fact of it.

The taxable person has to preserve the document, regardless of the mode of register, until the right to tax assessment expires.

According to Art., the document preservation liability is concerning both the original, in the absence of the original, the authentic copy created electronically in a manner defined in a separate legal regulation.

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## THE MEDIA COUNCILS RESOLUTION

In the Media Councils Resolution from April 30, 2013, the authority imposed a fine of 250.000 Ft on TV2 for the infringement surreptitious advertising in the TV show „Mokka” „Reklámtorta” broadcasted on 7 january 2013.

The topic of the program „Reklámtorta” was the legality of comparative advertising and through particular examples

the discussion on its affects on the competitors and consumers. As taking into account the aim of the show, it is considered to be an informative program under the scope of the Act on the freedom of press and on the basic rules relating to media content, in wich inter alia the product Saballo of Teva have been compared to Berlin Chemie's medicine, Prostamol Uno.

As a most important information affecting the consumers, the subject of the comparison were the objective facts related to the two products, such as the price of the product beside same quality. As it was clearly mentioned in the program, Saballo is a product with the same quality as Prostamol Uno, however a lot cheaper than the latter.

The comparative advertising, and in general the debates, disputes on the character, content of commercial communication is clearly regarded as public affair, because it concerns the wide scope of consumers . Therefore as such it is legal, but the advertising character of the comparative advertising has to be unambiguous. The target of the advertising has to be appealed from the character of the given program. The advertisor in every such case is the person in whose behalf the advertisement was published, or who ordered the advertisement.

Based on this, pursuant to the communications of the press and National Media and Infocommunication Authority: „Information suitable for the promotion of urology products embedded in the text of the program in a manner, that the intention for advertising was not openly undertaken. The publication might have misled the audience, because the program watchers have not met the characteristics of the advertising separately from the edited content”

This might jeopardise the pharmaceutical companies, because in such cases the Hungarian Competition Authority might levy a fine even up to hundreds of millions forints for advertisement disguising editorial content. The clear purpose of the advertisements is to draw the attention, demand to the product, opposed to this, the primary target of the editorial content, according to the consumer's experiences, is the information, amusement, education, expression of opinion. The concerned



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pharmaceutical companies in will need strategic discussions and decisions, by which the risk arising from such activities could be avoided.

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## THE CHANGES IN PROPERTY AND LIFE INSURANCE

In our May newsletter we presented the changes in the common provisions of insurance contracts. As a continuation we would like to present the changes in property and life insurance. As we mentioned already the NCC differentiates two main types of insurance contracts, damage insurance and amount insurance.

### Group I. – Damage insurance contracts

#### Changes of the common provisions of damage insurance contracts

The notion of the damage insurance is new. Those insurance contracts can be classified to this group which aim the compensation of the damage occurred at the insured person. According to the currently effective regulations, the property insurance and the liability insurance belong to this group. In our current newsletter we deal with the common rules of the damage insurance.

#### The prohibition of over-insurance

The NCC also prohibits and declares as partially null and void those insurance contracts in which the insurance amount exceeds the value of the insured property. The NCC establishes as a new rule, that in case of an insurance event, the insurance amount is the highest limit

of the insurance services.

#### Multiple insurances

The NCC newly establishes the rules of multiple insurances as a new rule. According to this, if the same insurance interest is insured by more insurers, than the policyholder can submit his claim to one or more insurers, as well. The insurers shall bear the already paid insurance amount proportionally between each other.

#### The under-insurance

There is no difference between the new and the currently effective regulations.

#### The increase of insurance premium

According to the NCC the rules of the increase of the insurance premium shall be applied in case of all damage insurance, thus neither the liability nor the accident insurance are exceptions. According to the NCC the insurer can apply the reduction of the insurance amount only if it noticed the policyholder in a written form until the fulfillment of the insurance service and inform him about the premium of the increase of the insurance premium.

#### Fulfillment of the insurer

The NCC does not contain any differences besides the usage differences.

#### The obligation of loss prevention and mitigation of damages

According to the NCC, in the interest of the obligation of loss prevention and mitigation of damages, the policyholder and the insured are required to act in a usually expected behavior.

The NCC prescribes that in the frame of this obligation the policyholder and the insured are required to proceed in accordance with the orders of the insurer; in the lack of it, they are required by the principle of expectation.

The rule that the costs of the loss prevention of the insurer



are unchanged, the new rule is that this cost is charged to the insurer within the insurance amount.

**Exemption from the obligation of insurance services**

There is no difference in the merits between the new and the currently effective regulations beyond the expansion of the group of persons causing the damage.

**Obligation of preservation**

There is no difference in the merits in the new and the currently effective regulations.

**Ordinary termination**

According to the NCC the exclusion of the right of termination for a period, which exceeds 3 years, is null and void in the part of the period above 3 years.

**Partially premium payment**

According to the NCC the insurer shall send a notice to the policyholder in case of the partially payment of the due premiums.

**Regress**

According to the NCC in case the insurer enforces its claims against the person causing the damage, thus it shall notify the insured person about this.

The NCC establishes further on, that the collateral of the ceased claim will be valid and will secure the claim.

**The finding of the property**

There is no difference in the merits in the new and the currently effective regulations.

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**EMPLOYMENT OF CROATIAN NATIONALS IN HUNGARY FROM JULY 1, 2013**

As from 1st July 2013, citizens of Croatia as EU nationals are allowed to enter into an employment in Hungary without any permission. However the employer shall report the employment of the Croatian citizens to the employment office, which is competent according to the place of the employment no later than on the first working day of the employee.

There is no required notification form therefore the notification can be submitted by the employer to the local employment office in any written form.

There is no required notification form therefore the notification can be submitted by the employer to the local employment office in any written form.

The notification shall include the type of the employment, number and nationality of the employees, and in case of family members – status of the family members, furthermore the commencement date of the employment.

This notification shall be retained by the employer for three years and shall be presented to the controlling organization or person. Although notification is not essential for the starting of the employment, you should be aware that the failure of notifying local employment office may result a fine up to HUF 500,000.

Important to note, that these rules are not applicable to employment in form of appointment, assignment or temporary employment.

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## THE UNIFIED PATENT COURT

For several decades, there have been debates about establishing a unified system for patents in the European Union. The main aims of the simplification have been the reduction of costs and an increase of legal certainty. Recently, this scenario has become much more realistic.

On 19 February 2013 the Unified Patent Court (UPC) Agreement was signed by 24 EU Member States. In addition, Bulgaria signed on 5 March 2013 as the twenty-fifth state. Both Italy and Spain are not going to be part of the agreement. The earliest possible date for the UPC Agreement to enter into force is the 1 January 2014. According to the Unified Patent Court Preparatory Committee, though, the beginning of the year 2015 is a more probable date because ratification by at least 13 states, including France, Germany and the United Kingdom, is required.

The ratification of the UPC Agreement will lead to a major change in how patent protection can be obtained and enforced in Europe as it will create a specialized court with exclusive jurisdiction for litigation concerning the infringement and validity of both European patents and the new Unitary Patents. Those will be granted by the European Patent Office under the provisions of the European Patent Convention and have unitary effect across all of the participating states.

Hence, instead of separate litigation in each Member State, patent holders will be able to enforce their rights in a single set of proceedings, which will most likely reduce the costs dramatically.

Until it the UPC Agreement is fully enforced, it is important for businesses in the EU to get familiar with the new system and reassess their patent strategies.

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**BWSP GOBERT & PARTNERS**

**TAX AND LEGAL**

pharmaceutical companies in  
will need strategic discussions  
and decisions, by which the risk arising from

**LAW SHOOTER**

**June 2013**

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