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# LAW SHOOTER

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## FALL BRINGS GREAT CHANGES

The beginning of fall brings lots of great changes to our law firm. BWSP Gobert & Partners will its team broaden with two new Senior Associates this month. One of the them is dr. Hasuly, who has been with our firm for more than two years and has now successfully completed her BAR exams to become an attorney-at-law.

We are aware that the season is about to get busy, however our legal updates will surely come handy, especially as this month's newsletter will be interesting for numerous industries! We are not only dealing with tax issues and various forms of fines but also about issues such as the liability of community air carriers. We at BWSP Gobert & Partners hope you will enjoy reading this month's newsletter and find the content informative. Should any questions arise regarding any of the material please do not hesitate to contact us, we remain at your constant disposal.

***Dr. Arne Gobert***
***Managing Partner***

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## ABOUT THE COMMUNITY AIR CARRIERS' LIABILITY

**In our present article we would like to define the obligations of Community air carriers as regards the nature and limits of their liability in the event of accidents such as death or injury, when baggage is destroyed, lost or damaged, also if the damage occasioned by delay.**

**Death or injury**

The air carrier is liable in the event of death, wounding or any other bodily injury to a passenger, if the accident took place on board an aircraft or during

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any of the embarking or disembarking operations.

There is no financial limit to the liability for damages in respect of death or injury. However, for damages up to 100.000 SDR, the air carrier cannot contest claims for compensation. In excess of that amount, the air carrier can defend itself against a claim only by proving that it was not negligent or otherwise at fault.

**Destruction, loss or damage to baggage**

The air carrier is liable for the destroyed, lost or damaged baggage in case the event caused the damage took place on board an aircraft or happened during the period of within which the baggage was in the charge of the carrier. In the case of checked baggage, the air carrier is liable even if not at fault, unless the baggage is detective or the damage is resulted from an inherent defect, quality or vice of the baggage. In the case of unchecked baggage, the air carrier is only liable if at fault, however at this time the burden proof is on the passenger.

When the baggage is destroyed, lost or damaged the air carrier is liable up to 1000 SDR for each passenger. The European Court of Justice stated in its recent decision that this compensation including the total damage caused, regardless of whether that damage is material on non-material, except when a special declaration and an additional payment is made at the checking-counter by the passenger.

**Passenger, baggage delay**

Additionally, when flight is canceled or significantly delayed, passengers may be entitled to compensation depending on the delay length and the flight distance.

The air carrier is liable up to 4150 SDR in case of passenger delay, and up to 1000 SDR in case of baggage delay unless it proves that took all reasonable measures to avoid the damage or it was impossible to take such measures.

**Claiming compensation**

If baggage is delayed, destroyed, lost or damaged the passenger must write and complain to air carrier as soon as possible. In the case of damage, the complaint must be made within 7 days and within 21 days in the case of delay, in both cases from the date on which the baggage was placed at the passenger's disposal.

Any action in court to claim damages must be taken within 2 years from the date of arrival of the aircraft or from the date on which the aircraft ought to have arrived.

In both cases, if no complaint was made within the given deadline, no action shall lie against the airline.

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## ARTICLES TO LOVE

## ON THE LEGAL PITFALLS OF A WEDDING III.

**Marital Property Contract**

The least romantic element of the wedding planning is the marital property contract, by meaning of which the parties to the marriage contract may regulate differently from the statutory provisions what falls within the spouses seperate and what within their common property. For the validity of such contract, it is necessary to draw it up in the form of a public document or in a private document countersigned by a legal representative. This is a formal requirement applicable not only for the conclusion of the contract, but also for the amendment, possible termination, or dissolution. Below is a short description on the classification of the various property elements based on the law.

According to the statutory provision, everything, that the spouses obtained – whether jointly or seperately – from the moment of concluding the marriage contract, through the entire existence of the marriage, belongs



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to the spouses' undivided, joint property, except of those articles, which belong to the seperate property of each spouse.

The following articles belong to the spouses' seperate property:

- those which at the time of entering the marriage already belonged to the property of the spouse (for example the husbands' car, he already owned, when he got to know his future wife);
- which the spouse received by inheritence or as a gift (for example the brides' ring, she inherited from her grandmother);
- property for a personal use and being of a common value and quantity (for example the wifes' clothes or cosmetics);
- property obtained on the value of the seperate property (for example the future husband buys a television on the money coming from before the marriage).

It is important to stress the rule, according to which an object belonging to a seperate property, which replaces the article serving the everyday common lifestyle, or furnishings and equipments and accessories of common value, will become a common property after fifteen years of matriomonial cohabitation. These may be typically furnitures and other articles for personal use, for example household appliances, if the existence of the above conditions are ensured.

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# POSSIBILITIES FOR TAX ABATEMENT AND PAYMENT FACILITIES II.

**Procedures to be followed when adjudicating petititons for tax allowences (tax abatement, tax facilities)**

The Act on Rules of Taxation (hereinafter: „**Art.**") ensures *opportunity upon equity for those taxpayers, who cannot or only partially can fulfill their declared or prescribed payment obligation until the due date according to the tax authority's effectice resolution and the tax legislations and on the ground of reasonable business or personal circumstances.*

**Tax allowence** as a general term may relate to

- payment obligation deferral, or to payment in installments,
- remission or reduction of payment obligation.

The base for these procedures is the petition for tax allowance upon an enforcement order (effective resolution by a tax authority on a payment obligation, tax return, official tax determination, court order determining procedural duty, report on health service contribution obligation).

Considering the requests on tax allowences, the authority is practiced - as a main rule at first istance - by the National Tax and Customs Office's lower-level tax bodies (tax directorates), (general) departments of tax allowances, official main divisions of the National Tax and Customs Authority's mid-level tax bodies (tax directorates-general) at second instance (except of the preferential taxpayers, who belong to the jurisdiction of Preferential Tax and Customs Directorate General's Tax Directorate for Preferential Taxpayers).

Permission of tax allowance is due exclusively upon request, which has to be submitted at the Payment Allowences Departments operating at the county (Metropolitan) tax directorates having jurisdiction in



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respect of private individuals according to their domicile, in the absence of such, their usual place of residence; in respect of self-employed persons and business organizations according to their registered office, lacking such, their place of business.

**A. Deferred payment, or payment by installment (hereinafter: payment facilities) (Art. 133.§)**

If the Applicant does not indicate the maturity of the deferred payment or the payment by installment, or the amount of the applied installments, it is not an obstacle for the examination of the request for payment facilities. In such cases of authorization, the tax authority determines the number of the payment installments or the due date of the deferred payment based on the available information.

According to Art. no payment facilities shall be authorized:

a) for advance payments of the income tax of private individuals and for income tax that has been deducted,

b) for local tax collected,

c) for contributions deducted by the payer from a private individual.

Pursuant to the Act, payment facilities may be authorized in case of joint existence of the following conditions:

- if the debtor has payment difficulties, due to which the debtor is not able to pay the debt immediately or in full amount,
- the payment difficulty cannot be attributed to the applicant or if the applicant has taken reasonable measures to prevent the difficulty as is expected in the given situation and,
- is of a temporary nature, that is to say that payment of the tax debt at a later time is rendered probable.

If the payment difficulty can be attributed to the applicant, the payment facilities may be still granted, if the applicant is a private individual and is able to provide some form of evidence demonstrating that payment of the tax immediately or in its entirety would constitute unreasonable hardship on his family, given his income, financial and social circumstances.

Generally, in case of granting payment facilities, the tax authority calculates surcharges, but there is a possibility to dismiss the imposition of surcharge upon the request of the applicant or ex officio in certain exceptional equitable circumstances.

The tax authority may stipulate various conditions for the authorization of payment facilities, which are typically terminating conditions, which means that if they arise, the allowences are terminated and the debt together with its charges shall be payable in full.

In case of a suspension condition (pre-condition) the allowance becomes valid only in the case of performance of the precondition, thus for example the tax authority may require:

- the payment of a certain part of the tax debt,
- to provide adequate security (suretyship, guarantee, escrow, movable-immovable mortgage),
- payment of enforcement costs,
- in respect of the transferred cases the payment of the fees payable to the indipendent court executors/bailiffs.

In respect of each payment facility we have to call the attention that if the applicant does not fulfill the authorized paymant facility / tax abatement or the condition stipulated in the resolution he looses the allowence, as well as the surcharge of beneficial amount calculated for the maturity, or the surcharge exemption allowance. The loss of the allowence of a surcharge of a beneficial amount and the surcharge exemption means that after the unpaid debt affected by the benefits, default interest defined in Art. has to be charged (the double of the central bank base rate).

If the taxpayer fulfills the tax allowance before the deadline stipulated in the resolution, upon a request to that effect, the tax authority converts the surcharges calculated in the resolution accordingly to the date of



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fulfillment.

For the effectivness of the tax debts collection, the authorization of payment facilities in case of a tax debt of significant amount; furthermore, if the debtor's payment discipline is in general not appropriate and the cover of the debts is not ensured by the implementation of acts of enforcement, the tax authority may require a gurantee (escrow, deposit, suretyship, bank guarantee). The securement of the cover for the debt is required particularly in the case the debtors are undergoing winding up procedure.

The subsequently (consecutively) submitted payment allowance requests (whether the non-compliance of the previous rescheduling, or new debt is concerned) are possible and in principal not excluded; however, the frequent repetition of requests reasonably calls into question the temporary nature of the payment difficulty.

When reviewing the request for payment allowance in respect of a private indvidual taxpayer, it has to be examined into what extent the immediate or entire payment of the tax would constitute unreasonable hardship on the applicant's family given his income, financial and social circumstances. During the examination of the taxpayer's income, financial situation, it has to be taken into account that information available on the income and financial circumstances – typically the submitted tax report or the results of the tax audit – are not outstandingly conflicting with each other.

In respect of private individuals, the tax authority is also investigating the existence or the lack of culpability, during which determination it takes into account the below reasons:

- the taxpayer has been continuing a spending, unduly exceeding the expenses needed for everyday way of life,
- at the request concerning value added tax debt as a result of settling the countarvalue, the value added tax previously charged was at the disposal of the applicant, but had not used it for the completion of his taxpayment obligation, private individual engaged in business activities had loaned funds to other person, or had contributed to an establishement of a company, or to the increase of the subscribed capital - with funds and contribution in kind.

When granting payment allowance, it has to be noted that the payment of the debt at a later time is ensured, or at least made probable. Thus in lack of culpability for the payment difficulty, or in case of social indigence the payment allowance may not be granted if for the settlement of the debt there is no chance in the future either.

According to the tax authority's resolution the unreasonable hardship may be determined also in case the debtor would have to sell those assets in order to settle the tax debt, which are not indispensable for the every day living, but they may not be considered as having luxury character either.

In respect of a non-private individual taxpayers the culpability, or its lack may be defined only upon the exact knowledge of the reasons and the applicant's conduct, motivation and circumstances, which is usually the case, if

- force mayor or due to a damage caused by a third party's tort the insurer or the person causing damage has not reimbursed it until the maturity of the applicant's payment obligation, but its repayment is probable,
- applicant has taken all necessary measures to collect the claims (initiation of enforcement, liquidation).

In general, request for payment allowences may not be granted, if at the time or following the due date of the tax debt, the financial resources to cover the debt were available, but the applicant has used them for other purposes, or the applicant has not taken all necessary measures to collect his claims, or the payment difficulty is the consequence of the withdrawal of assets from the economic managment.

**B. Remission or reduction of the payment obligation (hereinafter: tax abatement) (Art. 134.§)**



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During the examination of the requests for tax abatement, the investigation of circumstances (the circumstances of the development of tax deficit, the act constituting reason for imposing penalty, the frequency and grievance of the omission) does not come into question, whilst the deliberation of these circumstances have taken place in the basic procedure determining legal consequences. Thus, when deciding payment facilities only the existence or non-existence of the statutory conditions for practicing equity matters.

Remission or reduction of payment obligation may only happen in case of an actually existing debt. This means that the already settled payment obligation cannot be reduced according to this legal provision. However the automatically charged default surcharge booked on the tax current account might be reduced already before the due date of the prescription if the statutory conditions are given.

Capital debt may be reduced (remission) only in case of a private individual applicant. In cases of legal persons and other organizations the statutory provision provides opportunity to reduce (remiss) the amount of sanctions (surcharge, penalty).

In respect of ***private individuals***, within the question of reduction or remission, the tax authority deliberates wether the payment of the debt seriously endangers the livelihood of the taxpayer and those of his close relatives living in the same household. (Art. 134. § (1)).

Investigating the serious endangerment of the livelihood, the exploration of the income, financial and social situation is indispensable. The serious endanger of livelihood can be inferred, if the per capita net income of the taxpayer and those of his close relatives living in the same household does not exceed the smallest amount of the all time retirement pension, and this income situation is reflected by the taypayer's financial and social circumstances.

Of course it does not mean that equity may be practiced only in case of such a low income. Higher income may be a ground for equity as well, if the comparison of the income and other financial relations with the scale of the debt and its payment in full amount would seriously endanger the livelihood.

During the deliberation the tax authority takes into account inter alia the costs of the day to day living (food and nutrition), costs of housing, loan on the apartment, furthermore the monthly installment of the life insurance pertaining exclusively to it, the amount of other obligations and debts, the certified support given to the relative living separately from the common houshold, the additional costs related to the care of a disabled, or a permanently sick family member.

Loss of habitation belongs to the serious endanger of livelihood. That is why with the existence of other conditions the equity may be grounded, if it is determined that the debtor and his family's sole property is the property for housing.

At the deliberation the tax authority takes into account the achieved, but not yet taxed income (for example: multiple failure to issue proper invoice, which makes probable the concealment of the income and the revenue). It has to be noted also that the information regarding the financial and income relations are not in striking, insoluble contrast or discrepancy with each other.

Above the provisions stipulated in Art., the Act CXVII of 1995 on personal income tax (hereinafter: „***SZJA Act"***) provides an opportunity that the tax authority, upon the request of a private individual obliged to pay tax, reduces or cancels the tax charged on the income deriving from the transfer of real property and intangible assets, taking into account the income, financial and social circumstances; furthermore, the circumstances of use of the income deriving from the transfer of real property, rights representing assets.

Upon the request of a private individual liable to pay the tax, the state tax authority may reduce or cancel that tax given the private individual's income, financial and social circumstances and in light of the intended purpose for which the income from the transfer of the real estate property or right is planned to be used (such as, for covering the housing needs of the private individual himself, a close relative, domestic partner, or previous spouse).



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Pursuant to the SZJA Act the abovementioned conditions – the equitable financial, income and social situation of the taxpayer; furthermore, the meriting methodes of the use – must exist jointly, the absence of either condition entails the dismissal of the request.

The Act stipulates explicitly what may be considered as a use intended for housing and deserving special consideration; furthermore, what documents are certifying them, (for example the acquisition of a residential property itself does not constitute the intented purpose for housing, only, if the private individual or its close relative or ex-spouse actually builds a residential house on it.) Differing from the former regulations of the SZJA Act, reducement (cancellation) may be authorized in cases also, if the purchased or built residential property is registered as a weekend house, holiday home, but it serves as exclusive housing for the taxpayer or its relative, ergo it is the registered permanent address of the taxpayer and its close relative.

In case of *a **business organization*** the tax authority may reduce (cancel) a surcharge and penalty debt under special and exceptional circumstances, particularly if payment thereof *would make it impossible for the affected private individual, legal person or organization to conduct business operations*. *(*Art. 134. § (3)). The tax authority may grant reduction contingent with the condition of payment in a part (or the entire amount) of the unpaid tax.

Request of a ***private individual engaged in business operation*** must be examined with regard to the grounds invoked therein, its base may be the serious endanger of the livelihood (based on Art. 134. § (1)), or the unfeasibility to conduct business operation (according to Art. 134. § (3)). In the latter case within the scope of exceptional circumstances there is opportunity exclusively for the reducement or remission of surcharge and penalty debt.

The Tax Authority examines at the economic unfeasibility, it inspects especially the followings:

- date of the incurrence of the original obligation (in case of a long existing debt wether the taxpayer has shown payment intention),
- during the existence of the debts has the taxpayer submitted reducement request before, did he receive payment facilities, did he fulfilled them,
- success of the taxpayer's business activity based on the past two years (comparison of the tax report and the data of the balance sheet, debtor classification),
- is the taxpayer a member in an other undertaking, or has he gave assets to another company since the occurence of the tax debt (including undertakings of public interest, foundation payments regarded to have significant amount compared to the amount of the tax debt),
- are there pending bankruptcy, liquidation proceedings against the debtor, or is he undergoing winding up procedure,
- comparing the taxpayers obligations and claims is there a possibility to restore the economic managment in case of reducement,
- had the company receive or pay a division of a bigger amount.

The unfeasibility of economic operations requires a complex examination from the side of the tax authority, because its statutory consequence is the termination of the activity (which is liquidation in respect of business organizations), thus benefits might be used in a case where by the reducement of the debt the rational, reasonable operation may be restored or advanced. Consequently, if the economic operation became unfeasible, there is no option for equity.

Reducement is grounded if the company's economic operation would be endangered by the payment of the amount for which the reducement was applied for. In an exceptionally justified case, the existence of another equitable circumstance can be the ground for the reducement of penalty or surcharge. Thus, for



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for example in case of taxpayers undergoing winding up equity may be practiced, if exclusively the payment of the default surcharge and/or payment of the penalty would cause the failure to finish the winding up, that is its turn into a liquidation.

The mode and duty of the submission of the request:

- Taxpayers who are entitled to submit a request and who do not proceed personally, or cannot proceed personally (for example minors) may represent themselves by a **representative** according to Art. 7. § (1)-(2).

- There is an opportunity to submit the request for payment facilities **electronically or on a paper based format**. In the procedures of the tax directorates, the requests (FAG01, FAM01) which might be submitted electronically, can be filled, printed out and submitted through a regular postal way or personally at the NAV directorate's customer service, except for those taxpayers who may submit their request for tax allowences exclusively through electronic way.

- Requests for payment allowances and tax abatements might be **submitted exclusively electronically by** the employers, payers (meaning also the private individual employer who is not considered to be a private entrepreneuer), state employment organs, private entrepreneuer not considered to be pursuing complementary activity, registered churches in Hungary, taxpayer employing vocational school student based on a study contract.

- The paper based request should be submitted to the tax authority on a systemized format (or together with, enclosed to it) elaborated explicitly for this purpose and used to present data necessary for the assessment. These formulars might be found on the webpage of NAV (www.nav.gov.hu) under the menu point „Letöltések-egyéb" / „Adatlapok, igazolások, meghatalmazás-minták" / „Adatlapok fizetési könnyítésre és/vagy mérséklésre irányuló kérelmek elbírálásához".

Private individuals' or private entrepreneuers' tax directorate procedures of first instance concerning tax allowances is free of duty, while the duty of procedure for tax allowences, tax abatements initiated by business organizations is 10 000 Forints.

If the request does not fulfill the statutory conditions, while for example the subject of the request cannot be defined from it, the person submitting the request or its rights for representation cannot be defined, in case of companies the company authorized signature, in respect of private individual applicant his/her signature, the tax authority calls the applicant or its representative for **correction** – within eight days upon the receipt of the application – by indicating a proper deadline.

If during the clarification of the statement of facts, the tax authority finds that from the request and the available data conclusions cannot be drawn for the existance of the statutory conditions, fulfilling its obligation to clarify the statement of facts, it calls the taxpayer to **provide a declaration**.

If the Applicant does not provide declaration within the deadline stipulated in the notice and did not asked for extension of the deadline either, or he/she does not report the requested data, the tax authority decides upon the information it is in dispose of or it terminates the procedure with an order.

Ont he course of the assessment the tax authority differentiates among the requests for tax allowances and tax abatements in a way that while payment instalments and deferred payment may be authorized for the reported and accounted and not yet due tax also, reducement is possible only for the tax debt that is the unpaid debt following the due date, except from the default surcharge booked, accounted and automatically charged on a tax current account.

The fact clarifying obligation in respect of the statutory conditions of the requests is the responsibility of the tax authority, for which the tax authority of first instance might use several means of evidence (typically: the fact presented in the request of the taxpayer, data available ex officio, other documents, for example: data of the company-, real estate-, motor vehicle register, if necessary data sheet by the debtor or the economic organization's actual ledger extract, balance sheet, profit and loss account, accounting analytical register



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and the general ledger or cash book or other detailed register, invoice of the private individual pursuing individual undertaing, or site inspection, in which case the tax authority persuedes about the living circumstances of the private individual taxpayer and its close relatives living in the same household).

It is important to emphasize that by the non-fulfillment of the benefit (thus the instalments due), or the partial non-fulfillment, **the payment allowance ceases its validity and the tax debt becomes due in one amount.** The tax authority, without a particular notification refering to it, takes care of the partial restorement of the original status by the withdrawal of the facility from the taxpayer´s current account.

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