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LAW SHOOTER

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AUTUMN IS HERE AGAIN!

Autumn is here again - for many companies the 'busy season' begins now! Our updates highlight important legal developments, the latest update has interesting information for a wide range of industries.
An article can be found in our October newsletter regarding the changes in the rules governing the place of supply, coming into force as of the 1st of January 2015. Another very useful topic this month is about the right to bear a name, which is a recent remarkable decision of the Curia. Last but not least, the second package assisting the debtors is here!

Finally we are excited to announce that DWC is organizing its 4th Oktoberfest. You can find the details attached to our Newsletter, we hope you can join one of the best events in Budapest!
We at BWSP Gobert & Partners hope you will enjoy reading this month's newsletter and find the content useful and informative. Should any questions arise regarding any of the articles please do not hesitate to contact us, we remain at your constant disposal.

Dr. Arne Gobert
Managing Partner

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MOSS TO COME INTO EFFECT SOON! - RULES GOVERNING THE PLACE OF SUPPLY WILL CHANGE AS OF 2015

The tax authority has published a notification on the MOSS, the "Mini One Stop Shop", which enables a mini one stop shop value added tax (hereinafter: the "VAT") administration to taxpayers providing services, which can be supplied at a distance.
The mini one stop shop (MOSS) coming into force as of 1 January, 2015 will allow taxpayers providing telecommunications, broadcasting or electronically supplied services to non-taxpayers in a Member State in which they do not have an establishment, to submit their community VAT return due on those supplies via a web-portal in the Member State where they are identified.

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This one stop scheme is optional and is merely a simplification measure following the change to the VAT place of supply rules as of 2015.

In what ways will the rules pertaining to the place of supply in the EU VAT legislation change?

Place of supply will not be the Member State in which the service is provided, but the Member State where the recipient (customer) is situated. The MOSS enables the taxpayers not to register for VAT purposes in each Member State of consumption.

The European Commission with the cooperation of the respective Member States set up guidelines on the use of the MOSS scheme, which introduce the fundamental basis of its use in a comprehensible manner, making easier the deliberation regarding the entry and to bring decisions during the every-day use for the taxpayers. These guidelines can be already found on the webpage of the Commission (Guide to the VAT mini one stop shop; Explanatory notes on the EU VAT changes to the place of supply entering into force in 2015; Complementary guidance on data monitoring).
Following the entry into force of the MOSS our further detailed article on the subject may be expected, but certainly until and thereafter our professionals will remain at your kind disposal to answer individual enquiries.

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REMARKABLE DECISION OF THE CURIA ON THE RIGHT TO BEAR A NAME

In its recent decision in connection with the case No. Pfv. IV. 20.673/2014/3. the Curia had gave an answer to the question surrounded by a lot of uncertainty as to whether the corresponding act regulates exhaustively the possible forms of infringement of the right to bear a name, or the subject persons may successfully refer to other infringements as well?

According to the facts underlying the case the plaintiff is a historian, academic teacher, regularly publishing about the 20th century Hungarian history and the holocaust. The defendant is a founder and operator of a web-portal containing historical content.

On this portal an article named “Miklós Horthy and the Jews” had been released, at the end of which article a name identical to the plaintiff’s name was indicated without any further information in relation thereto. The plaintiff had made a complaint about it at the defendant, because the published articles were not his own, it was inconsistent with his views; nevertheless, they made the impression that he was the author, for which the plaintiff was forced to make explanations. The defendant did not name the real author, did not fulfill his personality right claims.

The Curia had determined in its decision that the defendant had infringed the plaintiff’s right to bear a name by publishing an article of historical subject on the webpage operated by him by indicating a name on it identical to the plaintiff’s.

According to the disputed legal provision infringement of the right to bearing a name shall mean particularly if someone illegally uses a name of another person, or illegally uses a name similar to someone else’s name. Pursuant to the Curia this provision does not contain exhaustively the list of the possible infringements. Thus it could be regarded abusive as well, if the publisher communicating the article to the public indicates a name identical to the plaintiff’s as being the author of the article, without any distinctive data, sign, that is without excluding the authorship of the plaintiff. Accordingly as a historian, researcher, the plaintiff is entitled to claim: in case of a publication related to his

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field of research, activity that the factual author is in some way distinguishable from him, that the receiving audience may only attribute views, arguments to the plaintiff, which are truly from him, furthermore, to appear on a forum, which was chosen by him.

The right to bear a name may not be interpreted narrowly: the publishing organization may commit abuse if it dresses up the situation as the author of the article was the plaintiff himself, yet this is not corresponding to reality and had arose a detrimental opinion about the plaintiff.

The decision carries not only theoretical but also practical importance: if someone intends to publish a material in the future from a person bearing an identical name, it must indicate beside the name a data (address, place of work etc.), which makes clear that the person of the factual author is not identical with the person publishing in similar research field. Due to the rapid spread of articles published on the internet, the courts will expectedly refer to this decision of the Curia many times.

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THE SECOND PACKAGE SAVING THE DEBTORS IS HERE!

The first act aimed at helping the foreign currency debtors has been adopted on 4 July, 2014, which inter alia declared the exchange-rate spread void and set up the presumption of unfairness in respect of stipulating a right to unilaterally modify contract. Contractual provisions thus qualified to be void made it necessary to regulate the course of settlement between the financial institutions and consumers, whereas in respect of the nullity of the exchange-rate spread and the invalidity of the unilateral contract modifications, overpayments have been generated.

The act on the general rules of financial settlement has been adopted in recent days as well; however, the detailed rules of settlement will be specified in a legislative instrument of a lower level, in a regulation of the Hungarian National Bank (hereinafter: the "*NB*").

The purpose of the legislator by this Act is to put a quick end to the extraordinary situation caused by the foreign currency loans and to prevent a huge number of litigations in connection with the financial settlements.

The scope of the Act – similarly to its predecessor - includes consumer credit agreements only. Whereas according to the Act on Consumer Protection consumer shall mean any natural person who is acting for purposes of purchasing, ordering, receiving and using goods or services which are outside his trade, business or profession; therefore, only non-commercial loans provided to individuals can be considered as consumer credits. Loans provided to individuals for business purposes and loans provided to businesses do not fall within the scope of the Act.

However, the primary objective of the Act is to regulate the financial settlements of the overpayments arising from the void contract terms, it regulates not only the mode and course of the settlement procedures but contains provision on accounting and tax issues, on suspended litigations and enforcement proceedings and on the 18-months interest moratoriums on loans as well.

From the perspective of settlement, the Act handles uniformly the settlement necessary due to the nullity of the exchange rate spread and the invalidity of the right to unilaterally amend contract: the financial institutions are accountable to the debtors for the overpayments caused by the application of the exchange rate spread and unilateral changes to contracts. Consequently, the amount to be thus refunded will consist of two parts:

I. On one hand, it will be the differential amount, by which the debtors paid more due to the application of the exchange rate spread (whilst the exchange rates applied by the financial institutions were probably higher than the official exchange rate valid for the given days determined by the NB)

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II. On the other hand, the extra amount by which the debtors had to pay more due to the unilateral amendments of contracts.

The mode of financial settlement regarding non-expired and expired contracts differs:

I. In case of non-expired contracts the debtor's outstanding capital amount of loans will be reduced
II. In the case of already expired contracts – due to the fact that the capital amount is not reducible anymore – the amount together with the default interest will be refunded.

Whereas, with regard to the large number of consumer credit types figuring in practice it was not possible to specify all detailed rules in one single act; further detailed rules in this respect will be laid down in a regulation of the NB.

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