



GOBERT ÉS TÁRSAI
ÜGYVÉDI IRODA

Andrássy út 10.
1061 Budapest
Hungary
Telefon + 36 (1) 270 9900
Telefax + 36 (1) 270 9990
office@gfplegal.com

LAW SHOOTER

September 2013

WELCOME BACK TO THE OFFICE!

We hope that the summer passed pleasantly and that you are ready to head back to the office! In the meanwhile our associates summarized all the legal updates altered during the summer. Furthermore we prepared an interesting legal seminar to which you are welcome to join!

Our office is organizing a great event in co-operation with the American Chamber of Commerce. During this event BWSP Gobert & Partners will hold a seminar on debt collection procedures on the 17th of September, more details can be found at the back of the newsletter.

Should you have any questions or comments, feel free to contact us!

*Dr. Arne Gobert
Managing Partner*

ON THE AMENDMENTS OF ACT I OF 2012 ON THE LABOR CODE

For those dealing with labor issues the present summer – after the Act I of 2012 on the Labor Code (hereinafter: „LC”) entered into force last summer – has also brought exciting changes. Act CIII of 2013 on the Amendment of Certain Acts with Regard to the Calculation of the Absence Pay and the Regulation of Public Funds (hereinafter: “AmAct”) as from 1 August, 2013 and 1 January, 2014 has amended certain provisions of the LC, which have not proved to be unambiguous in practice during the past year and their application has caused puzzlement to the law enforcers. In accordance with it, a part of the changes have been made with the aim to clarify the text of the act and to help the law enforcement. Apart from these amendments, we find

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FIRM INFO

• **OUR MAILING ADDRESS:**

HUNGARY
1061 BUDAPEST
STERN PALOTA
ANDRÁSSY ÚT 10.

• **OUR WEB-PAGE ADDRESS:**

WWW.GOBERTPARTNERS.COM

office@gfplegal.com

www.gobertpartners.com



such supplementations of the texts of norms, that have been formulated based on the principles being elaborated in the labor decisions of the European Commission. You may learn more about the most important changes below as follows.

1. Abolition of the famous divider 174 – the long – waited amendment

The main reason of the amendment of the LC was that following the LC coming into force, in connection with the reformed calculation of the absence pay – by introducing the unified divider 174 – several interpretation possibilities became known by the legal enforcers, which not only complicated the work of payroll administrators, but also showed in some cases (negative) alterations in the monthly salaries of the employees in the month, when the employee was on holiday, or in the month when the number of the worked hours differed from 174.

The AmAct has deleted the famous divider 174 – at least in respect of the basic wage and the absence fee, as a result of which the hourly basic fee/absence pay has to be calculated based on the number of working days required in the given month according to the general working schedule, instead of using the lump sum divider 174.

The legislator has kept the 174 divider in cases when wage supplement is calculated, where the hourly rate functioning as a base unit, have to be calculated by the dividing the monthly salary by 174. Its aim is - according to the reasoning of the AmAct - that the amount of the wage supplements should not depend on how many working day is in the given month according to the general working schedule.

However, this mid-year change has imposed a heavy administrative burden on the legal enforcers, because of the amendment the order will be restored and the employee will be entitled to his/her salary in the same amount since 1 August, 2013, whether the employee was on a paid holiday or irrespective of how many working hours he/she had to work in the previous month. The determination of the employee's monthly

emoluments will still remain complicated if they receive wage supplement also, because then the payroll administrators have to operate with both dividers.

2. Dodonian modification of the definition of flexible working schedule

The AmAct – in compliance with the arguments recognizable from the case law of the European Court of Justice (hereinafter: „ECJ”) [Commission v United Kingdom case – C-484/04] – has changed the notion of flexible working schedule. In accordance with the ECJ's ruling for the flexibility of the working schedule - and for the interest to ease the administrative and workorganizing tasks stemming from it – it is not enough to assign to the employee only 50% of the right to schedule working time.

We may only speak about flexible working time, if the employer has ceded the right to schedule the full working time to the Employee.

Based on the above the pertaining provision of the LC is going to change for the following as of 1 January, 2014:

„The employer may authorize the employee to schedule the working time – with regard to the independent arrangement of work - in a written statement (flexible working schedule). The flexible nature of an employee's working arrangements is not affected by tasks which can only be performed at specific times or periods due to their nature.”

However this wording is not really fortunate and the legislator's intention can only be recognized through knowing the AmAct, because the legislator does not states explicitly that only those working schedules may be regarded as flexible, where the employer grants the employee full right to schedule the working hours. Thus, the above provision makes possible another interpretation according to which flexible working schedule is also when the employee is obliged to perform certain tasks in a specific time in an undefined part of his working time (for example in 30-40-50-60 %).



Above this the provision results further uncertainties in the day to day legal enforcement and the fact that the flexible working schedule is not affected by the fix nature of certain tasks may become an excellent field of labor law disputes, under the general definition „certain working tasks” maybe delegated more, but also less working duty as well.

3. Allocation of vacation time

The Act has made unambiguous the provisions pertaining to the allocation of vacation time. Pursuant to these the employee has to be released from work consecutively for at least 14 uninterrupted days (the weekend days are included as well) at least once a year. The uncertainties around rescheduling the annual vacation time for the forthcoming year has been clarified also. That is because according to new regulations only the extra days of vacation time available to employees upon reaching a certain age may be rescheduled to the forthcoming year, instead of the 1/3 of the total length of vested and extra vacation time.

Another news is that during the allocation of the vacation time the employer may choose whether he grants the vacation according to the actual working schedule or on the basis of the general working schedule (for example in case of a working schedule based on the frame working time). This is a very useful amendment, because this way it has not to be investigated on the dot that which employee, for which period is entitled for vacation and for how many scheduled working day.

The common question - for how many vacation days are the employees working in several job profiles entitled for - still remained unchanged. The AmAct keeps the old regulations, which is that the vacations of employees working in a second employment or a double job profile, have to be calculated twice.

With the entry into force of the AmAct, above the correction of the regulations on absence pay, the LC is overcoming further more-less innovations. To the question, whether the current amendment achieves the

intended goal, or further amendment will be necessary according to the above, the application of the provisions in practice will give the answer.

Contact for further information:

Dr. Barbara Gál, Associate

Barbara.gal@gfplegal.com

36 1 270 99 00

TAX AMNESTY OR REGULATION REDUCING THE FOREIGN EXCHANGE DEBT?

A new bill under No. T/11398. (Act CXV of 2013 on the amendment of certain economical law), which introduces the **Stability Saving Account (SSA)** and was passed by Hungarian Parliament can be the subject of an interesting dilemma.

The commission explained the necessity of opening the SSA with the fact that more than 41 percent of the national debt is foreign exchange debt, which makes debt management more difficult, such as calculate the amendment. Therefore, this new possibility is meant to reduce the foreign exchange debt rate. Only private persons can open such an account – even anonymously, if required –, by depositing at least 5,000,000,-HUF. This is only possible at the time of opening the account and only once; however, the same person can open multiple accounts and the credit agency is obliged to give out a certificate that verifies the account holder's payment. It is important to note that the private person does not receive interest after the SSA and the income becomes taxable according to the tax rate of the interest effective on the first day of the given year at time of payment.

Nevertheless, in view of the above, the new construction may still seem unfavourable; however, it has several advantages:

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- for the purpose of legal regulation determining all payment obligation, as a legal consequence the paid amount is regarded as obtained income at the time of deposit, regardless of whether the taxes have been paid after the previously obtained income;
- unless prescribed otherwise in international agreement, the depositor should be regarded as a domestic person and the income shall be considered as derived from the inland;
- after the income the credit institutions shall deduct, pay and declare the tax to the tax authority;
- if more than 3 years pass between the collection to the SSA and the payment therefrom, tax shall be paid after the double of the amount of payment; if 3-4 years pass, the 100 % of the payment amount shall be taxed; in case of payment between 4-5 years, only the 50% of the payment amount is subject of tax; and **after 5 years there is no more tax liability at all.**

Further advantages of the SSA are **tax free inheriting and the account holder can nominate one or more beneficiary in writing in the event of his/her own death.** In the latter case, the SSA does not part of the heritage; ergo it is not subject of probate action. If the payment is made to the beneficiary or to the heritor, then the beneficiary or the heritor himself/herself becomes the account holder regarding the income.

The new account is very similar to a long-term investment account, whilst substantial difference among them is the tax payment. Namely, while in the former case we pay the tax on the total amount, in the latter only on interest. There is also a difference in the fact that **untaxed income can be placed on SSA anonymously as well.** Thereby the bill establishes the possibility of tax amnesty too, thus if it does not create a problem for the owner to keep the amount in the account for five years, the doubtful income will thereafter be registered as a tax-free income.

The above proposal is still under dispute at the Hungarian Parliament; therefore, this article is for informational purposes only.

In case that you would like to find our more regarding the above, please do not hesitate to contact our Law Office.

Contact for further information:

Dr. Réka Ipacs, Partner

Reka.ipacs@gfplegal.com

36 1 270 99 00

**„BUDAPEST“, „BUDA“, „PEST“
DOMAINS ARE COMING**

The Municipality of Budapest has adopted the rules pertaining to the registration of the generic top level domain names („gTLD“). The operation of the new domain names, and the business based sale of the particular internet addresses belonging to the domain, will be performed by the winner applicant company, listed on the tender organized by the Internet Corporation for Assigned Names and Numbers (hereinafter: „ICANN“), who has the exclusive right to grant authorization for the use of domain extensions. The tender creates a possibility that the geographical names, such as names of towns may appear as top level domain names, similarly to the domain endings referring to countries „.hu“ „.at“ „.de“ „.ru“, or to bigger regions „.eu“.

The managing right may be applied from the competent organization, establishing also the internet domain delegating rules, the ICANN. So far only for the „budapest“ domain name has been application submitted in the first bidding round of the tender announced by the ICANN, of which the winner will be published by latest, the end of September. to participate in the announced tender. According to the sources the a



proceeding tender, thus for the domains „buda“ and „pest“ we still have to wait. The price of the application in the first round was 185 thousand USD, that is 130 thousand EUR, following the successful assessment of the application, the registry management of the domain will be 25 thousand USD annually, that is 17 thousand EUR approximately. Furthermore, according to the domestic Domain Registry Policy, an alternate Dispute Resolution Body has to be set up for the domains apart from other technical requirements.

Municipality of Budapest has authorized the Mayor of Budapest - against a declaration undertaking obligation - to grant support to every applicant wishing to participate in the announced tender. According to the sources the application for „budapest“ domain name was applied to the ICANN - by the exclusive support of the capital city - by Top Level Domain Holdings Limited (TLDH), a publicly traded holding company focusing on acquiring and operating generic top level domains. As the winner of the tender the TLDH will be the register, operator and seller of the domain ending, out of which sale the Municipality of Budapest will also receive 35% revenue share. Pursuant to the regulations only one application can be submitted on behalf of the city, moreover an applicant not bearing the support of the relevant governmental authority may not participate in the tender, thus TLDH, as the sole company bearing the exclusive support of Budapest is taking part in the application.

“We are delighted that the government of another major world city has elected to work with us. We fully understand our responsibility to the City of Budapest and to its residents and businesses, and we look forward to providing them with a first-class service.”—announced the Chairman of TLDH. In addition to Budapest, the Company has been selected by the relevant governmental authorities of London, Miami, Bavaria, and North-Rhine Westphalia for their geographic top-level domains.

In relation with the so called second level domain names being registered under „budapest“ (for example „xy.budapest“) certain guarantee scheme has to be applied. Exclusively a content being in compliance with

the interest of the capital and its residents can be provided, therefore the webpage has to respect inter alia the human rights, the name of the city may not appear together with insulting expressions and with various forms of those expressions, it must prevent from advertising extremist ideologies, and may not violate the nationalities. As far as these requirements are not fulfilled the domain name, webpage delegated under the „budapest“ ending must be rendered inaccessible.

Introduction of domains including the name of the capital city „budapest“ or the part of it „buda“ and „pest“ is an excellent possibility, that Budapest is identified and found faster on the internet in the world of information society. By this, for the individuals, organizations being interested in the city, particularly for residents and undertakings the use of services or finding the appropriate economic partner will be accessible in a more direct and simple manner.

In case the above have attracted your interest or would like to receive more information on the aforementioned, please do not hesitate to contact us and our professionals will be at your kind disposal.

Contact for further information:

Dr. Lea Báncki, Junior Associate

Lea.banczi@gfplegal.com

+ 36 1 270 99 00

POSSIBILITIES FOR TAX ABATEMENT AND PAYMENT FACILITIES

Not enough known by the taxpayers that the tax authority (**NAV**) is expressly required to practice equity and if the certain statutory requirements are fulfilled, upon their request make concessions for the taxpayers. We draw the attention to our summary below for the requisition of these statutory possibilities.

office@gfplegal.com

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For more information please contact us

Gobert & Partners Attorneys and Tax Advisors

Andrássy út 10., Stern Palota, 1061 Budapest, Hungary

Phone: +36 1 270 9900 Fax: +36 1 270 9990



The Act No. XCII of 2003 on the Rules of Taxation (Art.) prescribes that „*the tax authority shall act equitably and if the conditions set out in the act are fulfilled, it shall abate tax debts or authorize some form of payment allowance.*”

Thus, if the act provides so, the NAV is obliged to practice equity within the framework of law. However the taxpayer is obliged to prove that his/her circumstances satisfy the conditions for equity.

According to Art. the tax authority's equitable powers are enforced basically on two areas:

- I. application of certain sanctions;
- II. procedures concerning payment allowances

I. Equity procedure in case of sanctions

If during the application of sanctions (tax penalty, default penalty, default interest, self-audit surcharge) the tax authority concludes that the tax payer has not or not appropriately fulfilled his tax liability, it uses certain detrimental legal consequences prescribed by law. According to Art. While applying these sanctions all circumstances of the case have to be taken into account, particularly

- the prudent conduct expected from the taxpayer
- the amount of the tax deficit (or other default), the circumstances of its origin
- the gravity and frequency of the unlawful conduct (action or negligence) of the tax payer

With regard to the above circumstances, the Art. ensures for the tax authority deliberation powers, which equity is the liability of that organizational unit – including the customs organization also – which has adopted the resolution on tax liability or sanctions, and in case of self-audit surcharge would have to adopt such resolution in the lack of self-audit.

The equity may be performed upon **request** or **ex officio**.

The reduce of the self-audit surcharge may be due exclusively upon request.

Request for the reduction of the amount of sanctions the taxpayer may submit

- i) in the remarks presented on the report,
- ii) in an appeal or
- iii) in a request for supervisory measures.

If the taxpayer in its notice called request for equity referring exclusively to the fact that the sanction is excessive compared to the gravity and frequency of his action or negligence; furthermore describes the circumstances of the case (that is, he disputes the legal ground or the extent of the sanction), the tax authority adjudges the request for equity as a request for legal remedy. In this case there is no need that the taxpayer declares his financial and income relations by submitting a data sheet.

In respect of certain sanctions there is a possibility for equity procedure in the below cases:

- i) **Default interest** – in *exceptional equitable circumstances* in the resolution on tax default – ex officio or upon request - the tax authority may define a later date as a starting date for the payment of the interest, than the due day of the tax or the date of the requisition of the financial aid. However, reduction of default interest is not possible in case of such tax deficit, when the reduction of a penalty may not take place either.
- ii) **Self-audit surcharge** may be reduced, when *the taxpayer justifies his mistake by circumstances, which would otherwise be a ground for the reduction of penalty*. The taxpayer has to prove the circumstances suitable for reduction. Please note that the paid self audit surcharge may be reduced too.
- iii) **Tax penalty** – its extent may be reduced in exceptional equitable circumstances, respectively its imposition may be cancelled, *if it is evident from the circumstances that the taxpayer, its acting representative, employer, member or agent has acted with due care in the given circumstances*.
- iv) **Default penalty** - the tax authority *upon deliberating the circumstances shall impose a penalty that is consistent with the gravity of the offense or shall refrain from imposing a penalty*. In the course of imposing a default penalty, the performance of equity belongs to the taxpayer-registry, procedural, duty, audit, enforcement or liquidation and dissolution departments, depending which area of expertise is imposing the penalty.

To be continued in our next newsletter with the payment facilities and the legal remedies applying for those.



Contact for further information:

Dr. Réka Ipacs, Partner

Reka.ipacs@gfplegal.com

36 1 270 99 00

**ARTICLES TO LOVE
ON THE LEGAL PITFALLS OF A
WEDDING II.**

**Starting the wedding planning - procedure before
the Registrar and deadlines**

Marrying parties have to announce their intent to a marriage contract jointly and in person at the Register Office, which is operating as a registry group next to the Mayors' Office in each self government. The announcement may happen at any Register Office, it is not subject to domicile or residence.

The earliest date of the announcement is 6 months before the wedding day, however the earliest day of the wedding is the 31th day following the announcement at the Registrar. An exception could be from the latter if the notary grants exemption or in an extreme case, when either party to a marriage is in a medical condition threatening with near death.

Following the announcement of the marriage intent, the Registrar examines if there is a legal impediment to the marriage. Such legal impediment is, if a person being under conservatorship wishes to enter a marriage, or if he is not under guardianship, but at the time of the marriage contract he was incompetent, except that the latter person being already in the possession of a legal capacity, subsequently approves the marriage. Another impediment to a valid marriage is, when the Registrar does not act in his official quality or if the parties to the marriage contract were not jointly present when expressing their marriage intent.

The marriage ceremony is void also in the case when the previous marriage or a previous registered partnership status still exists, furthermore in case of a marriage between direct line (ancestors, descendants) relatives, adoptive and adoptee, siblings.

Albeit it is void, the Registrar may grant exemption in respect of a marriage with the siblings' bloodline descendent, or with the ex spouses' direct line relative (for example when the spouse marries the ex spouses' ancestors or descendants, that is with her ex father in law, or ex mother in law, or with a stepchild).

It is important to mention, that if our beloved is not a Hungarian, but a foreigner citizen, generally proper documents certifying the existence of the legal conditions need to be obtained from the consulate, which means we need to calculate a proper time for this too and please check the competent embassies consulate department about the documents which need to be obtained, also the necessary time input and the possible costs.

After the announcement, the Registrar examines the existence of the necessary legal conditions for the marriage. If there is no legal impediment to the marriage contract, he invites the parties to the marriage to pay a determined fee.

The Registrar is entitled for a fee defined in the legal acts. However, we may see differing conditions regarding the fees in each self government, that is why it is also advisable to inform ourselves on the governing provisions in the given self government. A separate fee may apply in cases, when the marriage takes place at the weekend, furthermore it is applicable when we plan a marriage outside the self governments' premises, which is in fact ensured free of charge, or separate fee applies if we would like to host beyond the witnesses and the parties to the marriage more guests on the civil wedding ceremony and for this reason we are required to use other premises suitable for the marriage contract. It is very important to determine the time, while it may happen that the marriage is not possible on the given wedding day at the given selfgovernment. Unfortunately, in practice we may meet with cases like this as well.

If all the necessary fees have been paid, we must choose our witnesses. It is usual to invite one-one witness from both the husbands' and the wives' side. It is important to note that the witness must be of a legal age, must have a capacity and is able to be present on the wedding day to be able to sign the marriage certificate. If we wish to conclude a marriage with a foreign citizen who does not speak the Hungarian language, we need to take care of the presence of an interpreter.



office@gfplegal.com

www.gobertpartners.com

For more information please contact us

Gobert & Partners Attorneys and Tax Advisors

Andrássy út 10., Stern Palota, 1061 Budapest, Hungary

Phone: +36 1 270 9900 Fax: +36 1 270 9990



After making the above decisions we have nothing else to do than to announce the beatific „I do“!

Your contact for Real Estate, Transaction and Commercial Law:

Dr. Arne Gobert, Managing Partner:

arne.gobert@gfplegal.com

Your contact for Tax, IT, IP and Corporate Law:

Dr. Réka Ipacs, Partner:

reka.ipacs@gfplegal.com

Your contact for Data Protection, Litigation and Labour Law:

Dr. Andrea Klára Soós, Partner:

Andrea.sos@gfplegal.com

All materials prepared for you by the Attorneys and Tax Advisors team of BWSP Gobert & Partners



AmCham Morning Seminar: Cross Border Debt Collection Procedures

Tuesday, 17 September, 2013

Registration:

08:30 - 09:00

Time:

09:00 - 10:30

Location:

AmCham Conference Room, 1051 Budapest, Szent István tér 11., 6th floor

About the event

Debt collection proceedings are not limited to the territory of Hungary. It is the „debtors' paradise” to escape from the execution procedures by changing their address to a foreign country. Alternatively it is also a good possibility for the debtor to benefit from the legislation of a foreign country's execution procedure, and gain time through this procedure. Can the creditors mitigate this risk? In our practice we face that more and more clients turn to us in order to arrange for international debt collection procedures including the EU Payment Order procedures.

At the event our experts will speak about the basic rules of effective cross-border debt collections coordinated from Hungary.

How to register

To guarantee your seat, please register:

by e-mail to anita.arvai@amcham.hu

Events Manager

Anita ÁRVAI

E-mail: anita.arvai@amcham.hu

Phone: Work+36 1 428-2086



office@gfplegal.com

www.gobertpartners.com

For more information please contact us

Gobert & Partners Attorneys and Tax Advisors

Andrássy út 10., Stern Palota, 1061 Budapest, Hungary

Phone: +36 1 270 9900 Fax: +36 1 270 9990