



Tax&Legal Highlights

Hungary

The Hungarian Tax and Customs Administration is now suable for minor irregularities

The category of reimbursement of damages in administrative powers is extended due to the change of approach caused by the new administrative procedure. On average, 20-30 lawsuits are filed against the Hungarian Tax and Customs Administration (NAV) for damages annually. However, this number could be higher, as there is a way for businesses to win cases against the NAV.

The actions of the NAV may even cause damage to companies. For example, the tax authority often freezes a company's bank accounts and inventories and blocks its operations as early as the beginning of the inspection as a precautionary measure. In such cases, enterprises tend to contend such cases; still, they usually do not even consider filing for damages against the NAV.

The tax authority may be successfully sued for damages if it is proved that the damage was caused due to exercise of executive power or lack thereof due to its own fault, and if the damage could not be counteracted by appeals or in an administrative lawsuit.

However, it is not enough to have a court decision which overturns the case or calls for a new procedure; it also has to be proved that the damage was caused by the NAV's grossly erroneous legal interpretation, or the administrator's breach in bad faith or with gross negligence, or extremely irrational evaluation or ignorance of evidence.

Before the new code of administrative procedures entered into force, the standpoint on cases where the NAV caused the damages by a minor infringement only was uncertain. The reason for this is that in such cases, infringement was not established by the administrative courts in lawsuits against the NAV's decision, as the meaningful ruling of the case is not affected by minor irregularities.

However, the new code of administrative procedures settles this issue. In tax litigation cases, not only claims approved by the administrative courts can serve as a basis for claiming for damages against NAV, but also rejected claims, if a procedural infringement was ruled by the court as not affecting the case, i.e. minor.

The risk of a potential damage caused by the NAV is highest in the case of precautionary measures; freezes of bank accounts and inventories of companies; blocking of cargo and vehicles during EKAER inspections; prolonged disbursement of reclaimed VAT; and false information. If a company considers the NAV to have caused damages by its actions, the current legal environment provides for more opportunity for indemnification. The indemnification of damages attributed to NAV might lead the tax authority to act in a way that its actions do not cause unnecessary damages to enterprises.

Unexpected option of legal remedy in adjudicated tax litigation cases

In an increasing number of cases involving the tax authorities, it is found that the resolutions issued by the tax authority against companies contained formal errors.

The Curia of Hungary has recently ruled such resolutions void. It is uncertain how many cases might be affected by the Curia's decision, but its interpretation is likely to question the legality of numerous non-appealable resolutions, which might result in great tax savings for businesses. In this special edition of our newsletter, we would like to draw your attention to options of legal remedy resulting from the Curia's decision.

According to the Curia's decision, the tax authority's resolution becomes void if it was not issued in accordance with the legal regulations concerning form and competence. In the Curia's opinion, the decision-making process should be repeated in these cases. The decision is likely to affect numerous resolutions, resulting in great amounts of tax savings for businesses in cases of non-appealable adjudicated tax litigations. Savings result from the fact that the tax authority must consider the five-year limitation time of the tax assessment right during the new decision-making process. This often causes a situation where the tax authority cannot or can only partly assess tax liability of companies.

Even though the tax authority does not have an official opinion about how this time limit is enforced in the case of decisions repeated due to nullity, tax administration rules suggest the aforementioned interpretation.

The way in which non-appealable adjudicated cases can be disputed again can only be decided in light of the specific cases.

As the options of legal remedy resulting from the Curia's decision are only available for a fixed period, we recommend that those clients against whom the tax authority has recently assessed tax liability of a major sum should arrange discussions with our experts in order to make the most of the available options of legal remedy.

Making money from Bitcoin? It's time to think about taxes!

Investment options based on blockchain technology have become increasingly well-known in Hungary in the past few years. Approximately tens of thousands of early investors, day traders and miners in Hungary are informed about the latest developments, promising projects and "pump trends" on a minute-by-minute basis through lots of terabytes of information on Twitter, Facebook, or Telegram. Deloitte Private focuses on taxation issues concerning cryptocurrencies. The company's director dr. Gábor Baranyi has summarised the main risk factors.

In the almost unfilterable information noise, the average Hungarian crypto-investor has only recently begun to actively deal with the taxation on their investments. The question is not simple, as in the case of cryptocurrencies, it is not even clear what the expression means when translated into the language of law.

Fortunately, numerous international examples are available, many of them exceptionally progressive. Cryptocurrency is considered as a simple commodity by the Canadian legal system, while it is seen as a foreign currency in Switzerland. German law puts it in the category of "private money". The Court of Justice of the European Union regarded crypto-money as some kind of foreign currency in a ruling on the VAT treatment of the trade of cryptocurrencies.

In the Hungarian law, however, there is not yet any specific regulation on the legal standpoint on cryptocurrencies.

As with many other areas of technology, it is typical in the case of cryptocurrencies that it is especially hard for legislators to keep up with the speed of development. However, this lack of regulation indirectly poses great risks relating to the tax treatment of the generated profit for judicial bodies and the investors involved.

The tax authority's positions which were issued in 2015 based on individual enquiries have already been published and evaluated on several platforms. The position of the authority is briefly that the profit generated from investment activities as a private individual is considered so-called "other income" due to the lack of specific regulations, and as such, it requires the payment of almost 30% tax. In the case of wealth earned from "coins" that are "mined", a similar tax ratio is expected. For comparison: in the case of an exchange rate gain from shares, besides the 15% PIT, only a limited rate of health tax might arise. When considering the detailed rules regarding the settlement of expenses, it becomes clear that the tax treatment of cryptocurrency investments is especially unfavourable for private individuals.

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If the activity is carried out by a business instead of a private individual, the tax burden is smaller (9% corporate income tax and potentially 2% local business tax). Most investors, however, do not keep their crypto-savings in businesses, and passing on existing crypto-investments to a company poses serious taxation problems.

In countries where the legal treatment of cryptocurrencies is in a more evolved state, this is often coupled with favourable tax treatment. Estonia, for instance, indicated its intention at the end of 2017 to feature among the global leaders in blockchain-based initiatives through its supportive legal, tax and service environment. Favourable regulations exist in many other countries, such as Germany, Denmark, or Slovenia.

Many people try to escape the infamous Hungarian taxes and additional administrative obligations (i.e. tax advance assessment, or preparation of tax returns and continuous keeping of tax records) through the increasing number of investment schemes. However, the level of reliability and sophistication of these is quite low in most cases, which often entails further taxation and legal risks.

In relation to the tax treatment of crypto-exchange trade, one often comes across solutions trying to “optimise” Hungarian tax liabilities through complicated schemes involving foreign elements. However, we advise against such dubious and unreliable schemes, as they often lead to fake solutions only. Moreover, nowadays the tax authority sees through these techniques thanks to the information exchange systems operating between the tax authorities of different countries.

What is more, international “wangles” typically create further, often foreign tax liability and extra expenses for the investor. However, with conscious planning, taxation risks can be minimised in a legal way, without any kind of “fishy business” abroad.

In conclusion, the more complicated system is created for our crypto-investments, the greater the chance of a flaw in the planning, and then the investor’s situation becomes even worse than before. Therefore, it is worth connecting the leveraging of the opportunities technology has to offer with planning that minimises risks.

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