

WINNING CASE AGAINST THE TAX AUTHORITY BEFORE THE SUPREME COURT

The Hungarian tax authority has the obligation to apply the notion of 'net tax debt' over the course of audit and administrative proceedings initiated after Act CXXVI of 2007 on the amendment of certain tax statutes had entered into force. Thereby our client has rightfully decreased his corporate tax base by the amount discharged as local business tax and claimed as expense of the tax year, regardless that he held an insignificant amount of debt in one specific tax item as his overall tax account indicated overpayment.

In the summer of 2009 the tax authority has initiated an audit procedure against our client as to the re-audit of tax returns. It was established that since the company had held a tax debt in an amount of HUF 1,000, as of the last day of the tax year, in tax year 2006 under scrutiny he would not have been entitled to decrease his corporate tax base with the amount claimed discharged as local business tax, irrespective that the total balance of his tax account has indicated substantial overpayment. A condition was set to the eligibility for tax allowance decreasing the tax base, which excluded tax payers with outstanding tax debt in the tax authority's records as of the last calendar day of the tax year. The tax authority has eventually adopted a resolution during said audit, having established non-eligibility of our client for the tax allowance given the HUF 1,000 outstanding debt and regardless of substantial overpayment with respect to another tax item and therefore assessed outstanding tax liability and imposed tax penalty and default interest in the amount of several million Hungarian Forints. The tax authority upheld its opinion at second instance, which paved the way to judicial review. Both the Metropolitan and the Supreme Court embraced and approved our standpoint over the course of the judicial procedures.

The court had to decide as a fundamental issue whether our client had in fact a tax debt in the respective time period, and thus whether he was ineligible for tax allowance related to local business tax. At this point, the parties were at variance regarding the definition of 'tax debt', in particular whether the new term entered into force on November 16, 2007 by Act CXXVI of 2007 or the dissenting definition of tax debt previously in effect should be regarded prevalent. The amendment in fact introduced the definition of 'net tax debt' in a sense that upon assessment of the tax debt the amount of the tax debt registered by the tax authority shall be set off against the overpayment registered by the same tax authority.

The tax authority was of the view throughout the whole proceeding that the referred statute amendment has become applicable only as of the promulgation date thereof, i.e. November 16, 2007 and does not imply any provision which could be interpreted as being applicable on a re-audit of tax returns relative to the preceding year. Contrarily, our office had taken the position, which was eventually shared by both instances of courts that the amended provisions shall apply in pending cases not being decided as final and binding as at the date of the amended provisions' entry into force, in compliance with the transition rules of the respective statutes. It also follows that the tax authority was supposed to apply the new notion of 'net tax debt' in any audits commenced following the statute's entry into force, regardless that it involved tax obligation pertinent to a period preceding the amendment's entry into force.

The content of our present newsletter is of general information; it shall not qualify as legal counselling, as with respect to the specific circumstances of an individual case and to the ongoing/continuous amendment of the legal provisions in force it may eventually be needed to adopt a position different from the foregoing. Should you have any questions, specific problems, please contact us at budapest@bpv-jadi.com.

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