PÁNSZKY ÜGYVÉDI IRODA ATTORNEYS AT LAW RECHTSANWÄLTE

1026 Budapest, Gábor Áron u. 16.
tel.: +36 1 200 3416
mobil: +36 30 203 7883

NEWSLETTER

March 2017

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1. The European Court dismissed the application for the suspension of operation of the decision concerning the advertisement tax

In the order made on March 23, 2017 the president of the general court dismissed Hungary's application for interim measures, filed parallel with the action for the annulment of the Commission's decision concerning the advertisement tax.

By a separate document, lodged in January, Hungary claimed for the suspension of the operation of the contested decision until the General Court delivered its judgment on the main action and to order the Commission to pay the costs. According to the EU law the Court may order suspension of operation of an act if it is established that such an order is justified, prima facie, in fact and in law, and that it is urgent in so far as, in order to avoid serious and irreparable harm to the applicant's interests, it must be made. The General Court found that in this case the requirement of urgency has not been satisfied, thus Hungary's application for interim measures must be dismissed.

The order otherwise reveals that the Hungarian government meanwhile indicated it's intention to the Commission that from the two possible solutions mentioned in our previous newsletter, Hungary would choose to execute the Commission's decision by the latter, i.e. by repaying the total tax collected to the taxpayers, which means Hungary should waive nearly HUF 20 billion tax revenue.

2. Certain types of business entities can be established without procedural fee payment obligation, as of 16 th March

Act II of 2017 on the revocation of certain stamp duties and procedural fees related to administrative proceedings entered into force on 16 March 2017, as a result of which several types of official proceedings will be conducted free of stamp duties and fees in the future.

The most important news for business entities is that as of 16 March 2017, certain type of business entities can be established without procedural fee payment, as there will be no mandatory stamp duty and mandatory publication fee payment obligation for the establishment of the following types of companies: limited liability companies (Kft.), general partnerships (Kkt.), limited partnerships (Bt.), and sole traders (single member companies), regardless of whether the company is established in a simplified procedure (by using an incorporation document template) or a standard procedure. This will result in several tens of thousands, and even up to a hundred thousand Hungarian forints savings for the founders of such companies in the future. However, such amendment to the law does not apply to stamp duties and publication fees payable in relation to any later modification of the company registration data, and the new rules shall not apply to the procedural fees payable upon the establishment of other types of business entities, for example private limited companies (Rt.).

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Additional modifications to other laws introduced by the above referred law include provisions applicable to private individuals. The following official proceedings will be exempt from procedural fees in the future (amongst others): issuance of a birth certificate, issuance of a health insurance fund official certificate required for applications for government grants (twice a year), and the processing of applications submitted by Hungarian citizens living outside of Hungary, for a registration in the Hungarian national registration system of their personal identification data, and permanent address or service address.

3. Fate of advertising tax still unknown - Hungary files a legal challenge against the European Commission's negative decision at the European Court of Justice

As we reported in detail in our previous summary, the European Commission published a negative decision on the compatibility of the advertisement tax introduced in Hungary in August 2014, with the EU state aid rules, upon the completion of a comprehensive investigation launched in 2015. As it is established by the Commission in its decision dated 4 November 2016, the provisions of the Advertisement Tax Act relating to the progressivity of the tax rate and the deduction of losses carried forward from the tax base, constitute an unlawful state aid, which situation was failed to be remedied by the law being amended in June 2015.

In line with the EU legislation, Hungary has to recover the unlawful and incompatible state aid from its beneficiaries. In terms of the progressivity of the tax rate, recovery of the state aid shall mean the following, in line with the Commission's decision: "Hungary needs to treat all undertakings equally, as if they had been subject to a single fixed rate. By default, the Commission considers that the single fixed rate to be 5.3% as determined by Hungary in the amended version of the tax, unless Hungary decides, within two months from the date of adoption of the present decision, to set a different level for the single tax rate, that will apply retroactively to all undertakings over the whole period of application of the advertisement tax (original and amended versions), or to abolish the advertisement tax retroactively as of the date of its entry into force." Further, in terms of aids granted to undertakings making a loss in 2013, and as a result of a deduction of the losses carried forward: "Hungary has to recover the difference between the tax due by application of the fixed tax rate to the entire advertisement turnover of the companies subject to the tax, without any deduction of losses, and the tax actually paid. This difference corresponds to the tax that has been avoided following the deduction." – as stated in the Decision published on 20 December 2016.

The 2-month deadline expired in early 2017, without the Advertisement Tax Act being amended or abolished retroactively. Rather, on 16 January 2017, Hungary filed a lawsuit at the European Court of Justice, for the annulment of the Commission's decision.

Therefore, the outcome of the lawsuit is yet unknown, and similarly, it is unclear what path Hungary will take if being unsuccessful with the lawsuit, i.e. (a) whether it will amend the Advertisement Tax Act by introducing a single fixed tax rate, in which case it is questionable how it is technically possible to retroactively settle the tax payments by taxpayers formerly being ranked in the various tax bands, or (b) decides to abolish the advertisement tax entirely and retroactively, as of the date of the law entering into force, in which case, the total tax collected, together with interest, would need to be repaid.

Until the European Court makes its decision, all taxpayers have to comply with their tax filing and tax payment obligations, in line with the provisions of the current Advertisement Tax Act in effect.

4. March 31, 2017 is the payment deadline for the mandatory chamber's contribution

According to the provisions set forth in Act CXXI of 1999 on economic chambers, business entities are obliged to pay mandatory chamber's contribution in every year, in the amount of HUF 5000 until March 31 in the current year, i.e. until March 31, 2017 this year.

Information concerning the mandatory chamber's contribution can be found on the home page of the Hungarian Chamber of Commerce and Industry, clicking on the link below:

http://bkik.hu/gyakori-kerdesek-a-regisztracioval-kapcsolatban/tajekoztato-a-kotelezo-kamarai-regisztraciorol/

The unpaid chamber's contribution is a public debt which the state tax authorities collect like taxes.

5. March 15, 2017 is the deadline for the mandatory increase of the registered capital

Limited liability companies with registered capital below HUF 3 million shall increase their capital until March 15, 2017 the latest; concurrently, the entities shall also decide on continuing operations in accordance with the provisions set forth in the Civil Code and simultaneously amend the deed of foundation as per compliance to the new rules.

The capital may be increased by cash or in-kind contributions, or by both of them. The increase of the capital shall be accounted with the date of the court's registration.

It is possible to provide the cash contribution at a later date if the deed of foundation allows so, however if the time limit of the contribution is over one year, as long as the contribuiton is not performed the company shall not be allowed to pay any dividend and the members shall bear liability for the company's debts up to the unpaid part of their cash contribution.

In case there are no other changes to be registered as regards to the company, the amendments as per compliance to the Civil Code will be registered without any procedural fee. Should the company not submit the registration of the obligatory amendments within the deadline, the court will initiate a legal supervision proceeding, in which the court will impose a fine of between HUF 100,000 and 10 million payable by the company or by the executive officer if there is an evidence to indicate that the reason for judicial review is attributable to him. The court may impose the fine repeatedly.

If the company do not wish to increase it’s registered capital, until March 15, 2017 it is possible to decide on the company’s transformation to other corporate form (eg. to limited partnership with no obligatory capital minimum) or to merger with other companies.

We call your attention to that the purpose of our newsletter is general information, its content by no means qualifies as legal advice or opinion in single cases. If you have any question, observation concerning the above, please, contact dr. Pánszky Gyula through the e-mail address gyula.panszky@panszky.hu , or by phone, on the telephone number +36-1-200-3416. Thank you.

Budapest, 27 March, 2017

Pánszky Law Firm