



Tax&Legal Highlights

Hungary

No sanctions in online reporting

The amendment of the invoicing decree entered into force on 1 July 2018, making the online data supply of invoicing programmes compulsory since last Sunday. Minister of Finance Mihály Varga confirmed in a communication on 30 June that taxpayers cooperating in the transfer as partners do not need to expect any sanctions if the invoicing program they use is not yet capable of performing data supply at the aforementioned date.

He asked the National Tax and Customs Administration in an official statement to refrain from applying the legal ramifications before 31 July 2018 in the case of those taxpayers where the performance of real time data supply is in progress, but who are unable to launch it before the regulation becomes effective. The exemption from sanctions is bound by the Minister to two conditions: the taxpayer must be registered in the Online Invoice system, and missing invoice data must arrive at the tax authority by 31 July 2018; so there is a possibility for subsequent data supply by 31 July. In his statement, the Minister of Finance would like to draw attention to the economic goals hoped to be reached by the introduction of online data services: lightening the administrative burden of taxpayers, and further legalisation of the economy.

The exemption from sanctions was also confirmed by the National Tax and Customs Administration in an official communication on their website on 1 July.

Considering that at the majority of entities, the necessary IT developments are still in progress, and that several legal interpretations need to be clarified, the aforementioned announcement is an important step in the process. Therefore, it is still not too late for the fine-tuning of improvements, as taxpayers have four more weeks to implement the transfer without any penalty.

Labour lawsuits: employers increasingly favoured by courts

Enterprises are more prepared when terminating employees' employment relationships. Probably this is the reason for courts deciding in favour of employers in an increasing number of labour law cases, inspecting the reasons for and the circumstances of termination more thoroughly than in previous years – in this newsletter we provide an overview of labour courts and the Curia's latest judicial practice.

The central question in lawsuits regarding the termination of employment relationships is almost always whether the reason on which the employer has based the termination of the employment relationship is clear, real, and reasonable. In addition, employees increasingly argue that the termination of their employment relationship was abusive. (The analysis of the labour courts' practice regarding terminations of employment relationships violating the prohibition of abuse of rights is available [HERE](#).)

Our experience suggests that most entities already have sufficient labour law experience for the reasoning of the termination to be clear enough (i.e. the notice of termination does not only mention the reason for the termination of employment relationship in general). When proving the authenticity of the reason mentioned in the reasoning of the notice of termination, the employer must prove that the reason for termination is true to reality (e.g. in case of referring to restructuring, the position of the employee has indeed been terminated). When proving reasonability, labour courts expect employers to prove that the maintenance of the employment relationship was no longer reasonable, and as a result of the mentioned reasons, there is no need for the employee's work.

The following are the conclusions of three recent lawsuits concerning the termination of employment relationship.

Restructuring

The validity and reasonability of the termination of the interest in further employment is easier to prove in cases where the employer refers to the restructuring of its operations or the termination of the position of the employee, as in these cases, the termination of the interest in further employment is mostly evident. However, disputed situations do occur in such cases, as well.

In a recent judgement, the Curia of Hungary decided that the function of a position in the work organisation is determined by the tasks mentioned in the job description. Therefore, if an employer changes the management of an organisational unit after its creation with respect to the different function, the previous job is terminated despite the partially remaining tasks.

The Curia has also concluded that in the present case, the fundamental function of the organisational unit changed after the restructuring, and the special professional qualifications and experience of the new employee, which the previous employee did not have were indispensable in the new position.

Failure to cooperate

Often significantly more difficult are cases where the employer mentions the reason for the termination of the employment relationship as inherent to the employee's person or behaviour. In such cases, it can be decided based on all the circumstances of the case whether the employer's interest in further employment has been terminated as a result of the employee's ability or action.

Experience shows that in such cases, too, labour courts are much stricter with employees and are more lenient with employers. Recently, for example, in several cases, employees' cooperation liability has become the focus of labour lawsuits, and the labour court and the Curia of Hungary established a strict requirement benchmark against employees in every case.

In one recent case the employee who was on sick leave became fit for work and received a medical certificate about it, but only gave the medical certificate to the employer two weeks later, during which period he did not go to work. The employer terminated the employment relationship with immediate effect. After that, the employee obtained a medical certificate proving that he had been incapable of work during the two-week period. According to the Curia's opinion, the delay with the medical certificate was unreasonable and the employee committed a fundamental breach, serving as the basis for the termination of the employment relationship. With this decision, the Curia clarified the frequently experienced problem arising from breach of cooperation between employees and employers. Therefore, despite the employee's retrospectively presented medical certificate, the employer has the right for a real and reasonable termination, after considering the circumstances.

Loss of confidence

The Curia has decided based on the principle of obligation to cooperate in a labour law case represented by our firm. The basis of the argument regarding the authenticity and reasonability of the termination of the employment relationship was the question whether the employee could have endangered the legitimate economic interest of the employer, and whether the employee's behaviour could have resulted in the loss of confidence toward the employee on the part of the employer. The employee recommended an external service provider as a potential contracting partner to the employer in which he had profit share. The employer terminated the employee's employment relationship with reference to loss of confidence and endangerment of their business interest. According to the court's opinion, the employee failed to cooperate when he did not indicate to the employer that he had business shares in the external service provider he had recommended. According to the court's decision, this threatens the employer's legitimate business interest and leads to loss of confidence, even if the employer did not suffer any damage due to the employee's behaviour.

Summarising the above:

The occasional decisions of the Curia and the lower-level courts published from time to time suggest a direction where employers use more substantial notices of termination, and labour courts are more supportive of employers' business interests.

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However, in labour lawsuits, it is still difficult for employers to prepare comprehensive reasonings that include all aspects of the reason for termination. For this, it is essential that the termination of the employment relationship be appropriately prepared, as in a lawsuit, employers may only prove why the employee's work was not needed with regard to the reasons expressly listed in the notice of termination. The Curia published a comprehensive report on the legal consequences of the termination of employment relationships on 6 June 2016, available here: [HERE](#).

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