



Tax&Legal Highlights

Latvia

Proposed changes in Latvian VAT Law

The Ministry of Finance has published draft amendments to the Latvian VAT law (further – draft amendments). Proposed amendment to the Latvian VAT Law would introduce reduced rate of 5%, which will be applicable to specific fresh berries, fruits and vegetables characteristic to Latvia, including those that have been washed, peeled and packaged, but not thermally treated. The amendments (if announced according to current draft) will be into force from 1 January 2018 to 31 December 2020.

Please consider that the draft amendments have not been adopted yet, thus there might be changes during discussion process. In case the new reduced VAT rate would be adopted, amendments to the Latvian VAT return forms would also be made.

Damages Directive transposed: Should competition law infringers be scared?

The effectiveness of the fundamental objectives of competition law may be jeopardized if those who have incurred damages due to infringements of competition law are not able to bring actions for damages in an efficient manner. Although Article 21 of the Competition Law provides for the right to claim damages from the infringer, such actions are rarely brought in Latvian courts. Even more rarely the damages are compensated.

The reasons for that are the obstacles in proving the existence of an infringement and ascertaining the amount of damages, which in turn are closely linked to the claimant's limited ability to obtain evidence.

The legislator has undertaken to rectify these problems and deficiencies in the legal framework through amendments to the Competition Law and the Civil Procedure Law. These amendments transpose the provisions of the Directive 2014/104/EU on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (the "Damages Directive").

The relevant amendments to the Competition Law will enter into force on 1 November 2017 and will transpose the substantive provisions of the Damages Directive, whereas amendments to the Civil Procedure Law are expected to enter into force no later than on 10 November 2017 and will transpose the procedural provisions of the Damages Directive to the national law.

Amendments to the Competition Law

With the entry into force of the amendments to the Competition Law, the regulation regarding actions for damages will shift significantly to the benefit of the parties, who have incurred damages.

Firstly, full compensation shall place a person who has suffered harm in the position in which that person would have been had the infringement of competition law not been committed, that is, full compensation shall cover the right to compensation for actual loss and for loss of profit, plus the payment of interest.

Secondly, undertakings, which have infringed competition law through joint behaviour are jointly and severally liable for the harm caused by the infringement of competition law. However, there are exceptions to the obligation of joint and several liability. Under certain conditions, it does not apply to small and medium-sized enterprises and to infringers, who have been granted immunity from fines under a leniency programme.

Thirdly, in order to avoid overcompensation, compensation for actual loss at any level of the supply chain shall not exceed the overcharge harm suffered at that level. The burden of proving that the overcharge was passed-on shall be on the defendant, who may reasonably require disclosure from the claimant or from third parties. Nevertheless, the indirect purchasers are also entitled to full compensation.

Amendments to the Civil Procedure Law

Firstly, it shall be noted that all actions for damages for infringements of competition law will fall under the jurisdiction of the Riga City Latgale District Court.

Secondly, in view of the asymmetrical access to information inherent in actions for damages for competition law infringements, new provisions dealing with the requests of evidence have been introduced. At the party's request, the disclosure of evidence will be ordered by the court. However, it should be noted that the access to certain types of evidence will be limited. For example, the court cannot at any time order the disclosure of the following evidence: leniency statements or settlement submissions.

Although it is yet unpredictable to what extent and how active will the courts be in exercising their rights to order the disclosure of evidence, the court will also be entitled to impose a fine of up to EUR 14 000 for natural persons and up to EUR 140 000 for legal persons for failure or refusal to comply with the disclosure order or the destruction of the relevant evidence.

Thirdly, and very importantly, an infringement of competition law found by a final decision of a national competition authority or by a review court is deemed to be irrefutably established for the purposes of an action for damages brought before their national courts.

Finally, it should be noted that the general limitation period set by the Civil Law of the Republic of Latvia - 10 years - will also apply to actions for damages for infringements of competition law. The term begins with the termination of the infringement and is suspended during the investigation of the infringement by the competent authority.

The course of implementation

It is important to note that the deadline for transposing the Damages Directive was 27/12/2016. Better late than never, Latvian legislator will have transposed the Damages Directive almost a year after the transposition deadline.

Weeks before the transposition measures enter into force, persons who have suffered harm caused by competition law infringements should assess the feasibility of bringing an action for damages against an infringer in the framework of the improved legal order. The infringers, however, shall, firstly, stop any activity that infringes the competition law, and, secondly, engage qualified lawyers in case actions for damages are brought against them.

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