

Practical Aspects of Applying the Mandatory Compensation for Payment Recovery Costs Legal newsletter



Practical Aspects of Applying the Mandatory Compensation for Payment Recovery Costs

Deloitte Legal Szarvas, Erdős and Partners Law Firm, a member of Deloitte Legal's international network, is providing its clients with a monthly newsletter on the most recent changes and newly adopted regulations in economic law and the most notable legal cases. As the new Civil Code, the first one drafted since the regime change, entered into force on 15 March 2014 and affects nearly all areas of the economy, in the past and coming months we devote several editions of our newsletter to the rules of the new Code.

In line with the provisions of the EU directive on combating late payment in commercial transactions, as from 1 July 2013 the statutory compensation for payment recovery costs in the minimum fixed amount equal to €40 is mandatory also in Hungary. This newsletter discusses the practical aspects of adopting, paying, and enforcing such compensation.

Mandatory provisions of the Civil Code

In the case of delay in contractual payment, the New Civil Code requires the application of interest for late payments at the central bank's reference rate plus 8% as from the first day of the six-month period concerned by the delay. In addition, the party in default will also be required to pay to the creditor compensation for payment recovery costs in an amount equaling to €40. The contractual parties may neither effectively exclude the application of the compensation, nor specify an amount lower than the €40 defined by law. At the same time, the creditor may choose not to enforce his claim for the compensation and so relieve the defaulting party from bearing this extra burden in particular cases.

The statutory application, scope and accounting treatment of the compensation raises a number of questions (e.g. whether a waiver of the compensation incurs any gift or other stamp tax obligations).

Scope

The compensation applies only to contracts signed on or after 1 July 2013, and to those in which the amount owed and the interest for late payments is modified after that date. It means that— unless the amount owed and the interest for late payments are amended after 1 July 2013— contracts signed prior to that date are not subject to the statutory application of the compensation, even if the delay itself occurs after 1 July 2013.

Payable irrespective of culpability

Similar to the interest for late payments, the compensation for payment recovery costs is a type of sanction that applies objectively, irrespective of culpability. It means that it is due and payable irrespective of whether the defaulting party justifies the delay or whether the creditor indeed incurs any costs due to the late payment. To enforce the compensation equalling to €40, the creditor has to prove only that the other party is in default. The compensation may be claimed from the debtor for each instance of late payment. Accordingly, in the case of payment in instalments, the compensation may be enforced for as many instalments as the debtor is in delay with.

Amount

The amount equal to €40 is defined as the minimum amount of the compensation for payment recovery costs. The parties may not define a lower amount while they may specify a higher one at any time as the consequence of late payment. In the absence of a separate agreement, any recovery costs in excess of the amount equal to €40 may be claimed by the creditor on grounds of indemnity. The compensation for payment recovery costs is enforceable in addition to the amount of the interest for late payments. The compensation is regarded as part of the indemnity whereas it is not included in the amount of any default penalty specified for late payment (the reason for this is that in the case of amounts owed the rules of the late payment interest apply to default penalty while late payment interest and the compensation for payment recovery costs are to be treated separately).

Currency

The currency of the compensation is adapted to the currency of the underlying debt while its minimum amount shall always equal to at least €40 as defined by the Civil Code. Accordingly, if the principal amount is specified in HUF, the compensation for payment recovery costs must be converted using the EUR/HUF exchange rate officially quoted by the Hungarian National Bank on the (first) day when the obligation to pay late payment interest arises.

Accounting treatment

Upon delay, the defaulting party will be required to disclose the amount of the compensation as liability owed irrespective of whether the creditor has or has not yet demanded it from him. The compensation paid, or arising and becoming due and payable concerning the period relating to the period before balance sheet date has to be disclosed as expenditure. The creditor will be required to recognise the compensation as income only to the extent and in the amount it has actually been paid to him.

The creditor's waiver of his claim for the compensation (i.e. if the creditor relieves the debtor from the obligation to pay the compensation) will, as a general rule, not trigger gift or other stamp tax obligation.

Deloitte Legal

Deloitte Legal is a unique network of 125 offices in 55 countries with more than 1,100 experienced lawyers providing a wide range of legal services. In 13 countries across Central Europe, local and international clients are served by a highly qualified team of more than 150 lawyers possessing a wealth of industry experience in, amongst others, the FSI sector and the manufacturing industry. The members of this network of law firms work together with Deloitte's other professionals, leveraging their experience and expertise in representing their clients internationally and in solving complex issues.

Deloitte Legal Szarvas, Erdős and Partners Law Firm, Deloitte Hungary's correspondent law firm, is the Hungarian member of the global Deloitte Legal network. To learn more, please visit www.deloittelegalce.com.

Contact us

If you have any questions or comments concerning the above, please contact our experts below:



Dr. Gábor Erdős
Attorney
Partner Associate
+36-1-428- 6813
gerdos@deloitteCE.com



Dr. Júlia Szarvas
Attorney
Partner Associate
+36-1-428-6465
jszarvas@deloitteCE.com



Dr. Péter Göndöcz
Attorney
Partner Associate
+36-1-428-6974
pgondocz@deloitteCE.com



Dr. Anna Katalin Papp
Attorney
Managing Associate
+36-1-428-6736
apapp@deloitteCE.com



Dr. Anita Baracsi
Attorney
Senior Associate
+36-1-428-6844
abaracsi@deloittece.com

These materials and the information contained herein are provided by the Deloitte Hungary and are intended to provide general information on a particular subject or subjects and are not an exhaustive treatment of such subject(s).

Accordingly, the information in these materials is not intended to constitute accounting, tax, legal, investment, consulting, or other professional advice or services. The information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

These materials and the information contained therein are provided as is, and Deloitte Hungary makes no express or implied representations or warranties regarding these materials or the information contained therein. Without limiting the foregoing, Deloitte Hungary does not warrant that the materials or information contained therein will be error-free or will meet any particular criteria of performance or quality. Deloitte Hungary expressly disclaims all implied warranties, including, without limitation, warranties of merchantability, title, fitness for a particular purpose, non-infringement, compatibility, security, and accuracy.

Your use of these materials and information contained therein is at your own risk, and you assume full responsibility and risk of loss resulting from the use thereof. Deloitte Hungary will not be liable for any special, indirect, incidental, consequential, or punitive damages or any other damages whatsoever, whether in an action of contract, statute, tort (including, without limitation, negligence), or otherwise, relating to the use of these materials or the information contained therein.

If any of the foregoing is not fully enforceable for any reason, the remainder shall nonetheless continue to apply.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.hu/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting, financial advisory and legal services (legal services to clients are provided by cooperating law firm Deloitte Legal Szarvas, Erdős and Partners Law Firm) to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's approximately 200,000 professionals are committed to becoming the standard of excellence.