

Supreme Court ruling on hostile takeover  
defence costs  
Legal newsletter



# Supreme Court ruling on hostile takeover defence costs

Deloitte Legal Szarvas, Erdős and Partners Law Firm provides its clients with a monthly newsletter on the most recent changes and newly adopted regulations in economic law and the most notable legal cases.

Supreme Court of Hungary has issued a ruling of major significance regarding the tax treatment of hostile takeover defence costs. The Supreme Court, contrary to NAV, agreed with the taxpayer's position in all respects stating that hostile takeover defence by capital market players is a reasonable business behaviour; therefore the related expenses may be deducted from the corporate income tax base, and the related VAT is also deductible. The ruling constitutes a precedent as neither the European Court of Justice, nor Supreme Courts of other European countries have adopted any decisions on this issue.

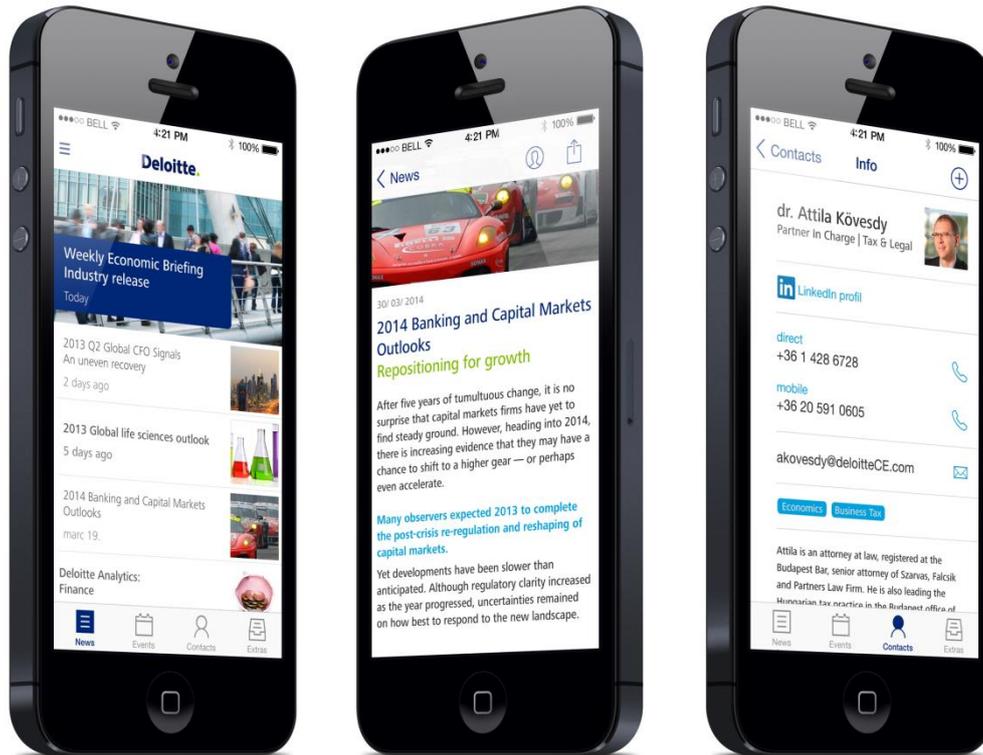
## Precedent case

To date neither the European Court of Justice, nor Supreme Courts of other European countries have adopted any decisions regarding the tax treatment of hostile takeover defence costs. **Deloitte Legal's tax lawyers consulted tax experts of twenty European countries, and found only one Supreme Court decision in the United Kingdom pertaining to hostile takeovers. In that instance however, the court supported the tax authority's view.**

In its ruling the Hungarian Supreme Court set forth that **capital market players** – up to a point allowed by law – **are entitled to defend themselves in a hostile takeover situation.** This does not contradict the principle of the free movement of capital. **The Supreme Court declared that hostile takeover defence is closely linked to the business activity of the target; therefore the related costs must be recognised for the purposes of the corporate income tax.** With respect to the deduction of VAT, the Supreme Court emphasised that "a short-sighted application of the VAT rules would have devastating consequences"; therefore the rules on the deduction of VAT may not be interpreted in narrow-minded manner. The mere fact that an expense does not directly serve a product or service supply does not mean that it is not directly linked to the whole of the business activity. **In the case of expenses directly linked to the whole of the business activity, companies are entitled to deduct VAT.**

Being of a precedential value, the Supreme Court's ruling is expected to have a significant impact on the tax authority's audit practice. This ruling is a step towards prohibiting expenses that are indirectly linked to the business activity to fall within the scope of adverse tax treatment: **if these expenses are incurred in the course of the business activity, then they may be recognised for corporate income tax purposes, and the related VAT is deductible.**





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