

## Tax News+



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**Below you will find the tasks and potential issues arising from key tax law changes of the past month and recent weeks. We would be ready and glad to discuss with you any of your company specific issues.**

## **Uncertainties regarding the application of the new definition of financial lease in the Civil Code**

The new Civil Code entered into force on 15 March 2014, and sets forth a new definition for financial lease. Under the new definition, if the owner provides an asset or a right for the use of another person, then the transfer may qualify as a financial lease. The new definition concerns transfers that take place for consideration and cover a definite period of time. Further conditions must be met as well for a transfer to qualify as financial lease.

A transaction should be considered as a financial lease under the new definition of the new Civil Code,

1. If the lessee is entitled to use the asset or the right under the leasing contract for a period of time meeting or exceeding the economic lifetime of that asset or right.
2. If the period of use is shorter than the economic lifetime of the leased asset or right, then the lessee is entitled to acquire the ownership of the asset or the right upon expiration of the leasing contract. This scenario is applicable if the acquisition of ownership takes place without consideration or at a price that is significantly lower than the market value of the asset on the starting date of the leasing contract.
3. The total amount of payable leasing fees meets or exceeds the market value of the leased asset or right on the starting date of the leasing contract.

Under the new definition of financial leasing agreement, certain risks may arise considering that certain long-term rental agreements, or operative leasing agreements may be re-qualified as financial leasing agreements under the new Civil Code. This re-classification entails the specific risk that the accounting and tax treatment of such transactions may be modified because the provisions of the

Accounting Act referring to financial leases are based on the definition set forth in the Civil Code.

Furthermore, the Act on Credit Institutions and Financial Enterprises (hereinafter: "Financial Institutions Act") contains a definition of financial lease that partially differs from that of the Civil Code. Due to the lack of a unified regulation in the Hungarian legal system, the question may arise whether transactions may occur that qualify as a financial lease either for the purposes of the Civil Code or, alternatively, for the purposes of the Financial Institutions Act. Such a situation may be particularly ambiguous for companies that carry out rental or operative lease activities on a permanent or an ad hoc basis. This is based on the fact that most of these companies do not possess permission (required by the Financial Institutions Act) to carry out financial lease activities.

Based on the above, it is important to review the currently applied contractual conditions included in agreements in which the owner provides an asset or a right for the use of another person for a definite period. A detailed review should be carried out from a legal and a tax perspective in order to identify the potential risks associated with the re-classification of the agreements. Carrying out such a review may be complicated due to the different set of definitions applied by the relevant acts. We note that no established legal practice currently exists in respect of the regulations of the new Civil Code.

Both the companies carrying out the referred activities and the companies purchasing such services may be affected by the re-classification. Therefore, a review of all of the agreements in which the owner provides an asset or a right for the use of another person for a definite period is recommended.

Should you require assistance regarding the above matter, our professionals would be pleased to assist you.

# Contacts

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

## Dr. Attila Kövesdy

Partner in Charge  
Deloitte Co. Ltd.  
Tel: +36-1-428-6728  
E-mail: [akovesdy@deloitteCE.com](mailto:akovesdy@deloitteCE.com)

## Dr. Gábor Kóka

Partner  
Deloitte Co. Ltd.  
Tel: +36-1-428-6972  
E-mail: [gakoka@deloitteCE.com](mailto:gakoka@deloitteCE.com)

## Dr. István Falcsik

Senior manager  
Deloitte Co. Ltd.  
Customs and global trade  
Tel: +36-1-428-6696  
E-mail: [ifalcsik@deloitteCE.com](mailto:ifalcsik@deloitteCE.com)

## Beáta Horváthné Szabó

Director  
Deloitte Co. Ltd.  
Global employer services  
Tel: +36-1-428-8267  
Email: [bhorvathne@deloittece.com](mailto:bhorvathne@deloittece.com)

## László Winkler

Director  
Deloitte Co. Ltd.  
International tax  
Tel: +36-1-428-6683  
E-mail: [lwinkler@deloitteCE.com](mailto:lwinkler@deloitteCE.com)

## Dr. Gábor Erdős

Attorney  
Partner Associate  
Deloitte Legal Szarvas, Erdős and  
Partners Law Firm  
Tel: +36-1-428-6813  
E-mail: [gerdos@deloitteCE.com](mailto:gerdos@deloitteCE.com)

## Dr. Géza Réczei

Partner  
Deloitte Co. Ltd.  
Tel: +36-1-428-6767  
E-mail: [greczei@deloitteCE.com](mailto:greczei@deloitteCE.com)

## Péter Gémesi

Director  
Deloitte Co. Ltd.  
Transfer pricing  
Tel: +36-1-428-6722  
E-mail: [pgemesi@deloitteCE.com](mailto:pgemesi@deloitteCE.com)

## Dr. Csaba Márkus

Director  
Deloitte Co. Ltd.  
R&D and government incentives  
Tel: +36-1-428-6793  
E-mail: [csmarkus@deloitteCE.com](mailto:csmarkus@deloitteCE.com)

## Dr. Júlia Szarvas

Attorney  
Partner Associate  
Deloitte Legal Szarvas, Erdős and  
Partners Law Firm  
Tel: +36-1-428-6465  
E-mail: [jszarvas@deloitteCE.com](mailto:jszarvas@deloitteCE.com)

## István Veszprémi

Partner  
Deloitte Co. Ltd.  
Tel: +36-1-428-6907  
E-mail: [iveszpremi@deloitteCE.com](mailto:iveszpremi@deloitteCE.com)

## Dr. Eszter Gyuricsku

Director  
Deloitte Co. Ltd.  
Global employer services  
Tel: +36-1-428-6756  
Email: [egyuricsku@deloitteCE.com](mailto:egyuricsku@deloitteCE.com)

## Zsolt Sándor

Director  
Deloitte CRS Ltd.  
Business Process Outsourcing  
Tel: +36-1-428-6692  
E-mail: [zsandor@deloitteCE.com](mailto:zsandor@deloitteCE.com)

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