Communication concerning the decision of the Curia of Hungary
in administrative case n° Kfv.VI.35.683/2012

The rights and assets of the plaintiff's companies were injected into a newly established company in which the plaintiff had a 10 percent share, while an offshore company registered in the Channel Islands owned the remaining 90 percent of the company shares. The new company was then acquired by a foreign owned business entity, and as a result of the latter transaction, the whole amount of the purchase price was paid to the plaintiff and his companies.

In its decision, the first instance tax authority found that the plaintiff had omitted to duly pay personal income tax in respect of the above transactions. The tax authority argued that the acquisition of the newly established company had, in reality, involved only the plaintiff and the foreign owned buyer, thus, the transacting parties had merely intended to avoid taxation through the offshore company's ownership. Consequently, the plaintiff is obliged to pay income tax on the revenues originating from the sale of company shares. The second instance tax authority, the defendant in the present case, upheld the first instance decision.

Based on the plaintiff's claim, the competent tribunal quashed the first and second instance decisions of the tax authorities and ordered the first instance tax authority to reopen its proceedings. The tribunal pointed out that the tax authorities had not completely assessed the witness testimonies taken and the contracts available during the administrative proceedings, therefore the authorities had incorrectly qualified the examined contracts.

Proceeding upon the defendant's petition for judicial review, the Curia quashed the judgement of the tribunal and rejected the plaintiff's claim. It stated that the tribunal had illogically and irrationally assessed the evidence. The tax authorities correctly found that the transaction aimed at selling the newly established company's shares had, in reality, involved only the plaintiff and the foreign owned buyer, and as a result of the transaction, the purchase price had been paid to the plaintiff. Contracts, financial transactions and other similar acts shall be interpreted according to their true content. Taxpayer rights shall be exercised in a lawful and proper manner, the improper exercise of these rights entitles the tax authority to re-qualify the examined transactions. The plaintiff should not benefit from and the defendant should not be held liable for the fact that a non-verifiable offshore company was also involved in the transaction. The failure to directly prove the plaintiff's economic interests in the offshore company cannot put into question the lawfulness of the decisions of the tax authorities. With regard to Article 67, paragraph (1) of the Personal Income Tax Act, the plaintiff shall be obliged to pay personal income tax on the whole amount of the revenues originating from the sale of company shares. The responsibility for producing evidence as regards additional costs lies not with the tax authority, but with the plaintiff.

Budapest, the 14th of January 2014

Administrative and Labour Department of the Curia of Hungary