

Communication concerning the decision of the Curia of Hungary
in the criminal case n° Bfv.II.222/2012/5

Proceeding upon the petition for judicial review submitted by the defence attorney of the accused, the Curia upholds the decisions of the first and second instance courts with respect to the accused in the criminal case of tax fraud and other crimes.

The Curia found the accused guilty in tax fraud and in falsifying private documents, thereby violating Article 310, paragraphs (1)-(3) and Article 276 of the Criminal Code.

In the petition for judicial review the defence attorney of the accused complained that criminal substantive law was violated when establishing the guiltiness of the accused. The defence attorney stated in particular that

- according to the facts of the case the accused did not violate the Act on VAT;
- nothing forbids selling goods for an amount different from their market value, the difference in price might be due to various considerations that do not render the transaction illegal;
- according to the Act on VAT that was in force in the period concerned, the unit price and the amount paid shall appear on the invoice, neither of which is necessarily the same as the market value;
- according to Article 34 of the Act n° XCI of 1990 on Taxation “the person subject to VAT obligations shall issue a certificate (invoice) prescribed by law, including the receipts received by cash registers approved by an agency authorised thereunto by legal regulation in respect of the sales they effect.” With respect to this, no omission or violation was established in the facts of the case.

The petition for judicial review was not well-founded.

According to the facts governing the review proceeding the appliance, that was worth at most 1 million HUF, was sold by the accused on behalf of G Ltd. to F Ltd. The accused, acting on behalf of F Ltd. registered the invoice in the accounting of the latter Ltd. and included the VAT in the tax declaration of the company represented by him. By submitting a false declaration the accused caused a damage of 4,612,500 HUF for the state budget.

According to the facts established the accused did not even intend to pay the price of the appliance when concluding the contract. The false invoice was issued and registered in order to cause damage for the state budget.

Tax fraud can be committed only by a person subject to tax payment, since tax fraud postulates that the person concerned is subject to taxation.

In making the decision the Curia took into account Council Directive 2006/112/EC on the common system of value added tax, the judgements of the European Court of Justice, as well as the Act n° LXXIV of 1992 on VAT. According to the latter, “the taxable person has the right to deduct from the tax he is required to pay the amount of tax he was charged in connection with the purchase of goods and services by another taxable person provided that this is subject to the value added tax system”. The right can be exercised only if there is authentic evidence (e.g. invoice) that proves the amount of the value added tax. Therefore, if there is no such document, the right to deduct cannot be exercised.

The Curia established based on the facts of the case that the accused did not have such a document. The invoice used by him was false in its content, and he was not entitled to deduct a VAT amount of 4,612,500 HUF.

The Curia examined the case also according to Article 44, paragraph (5) of the Act on VAT, according to which “the issuer shall be responsible for the authenticity of the data entered in the invoice and simplified invoice. The tax-related rights of the taxable person indicated on the invoice as the buyer shall not be compromised if, in connection with tax obligations, he has acted with due circumspection with a view to the circumstances of the supply of goods and services”. In the present case “due circumspection” is not verified since the accused accepted and registered an invoice of false content that indicated a price absurdly differing from the real market value of the appliance.

Therefore, the Curia established that no criminal substantive law was violated in establishing the guiltiness of the accused.

Budapest, the 12th of February 2013

Criminal Department of the Curia of Hungary