

Communication concerning the decision of the Curia of Hungary
in administrative case n° Kfv.VI.35.575/2012

A subsidiary company, the plaintiff in the present case, borrowed funds in order to increase the share capital of the foreign members of a multinational group of companies to which it belonged, subsequently it ceded the loan to its parent company for a 0.1 percent interest rate margin. Thus, the financing was carried out by the parent company. As a result of the above transaction, the plaintiff has reduced its company tax base by more than sixteen times the received interest rate margin over the examined period. According to the tax authority, the transaction was aimed at obtaining corporate tax benefits in Hungary.

With regard to the group interests of the holding company, the first instance court modified the decision of the tax authority.

The Curia quashed the final court decision and rejected the plaintiff's claim. It argued that the group interests of the holding company cannot override the plaintiff's taxpayer rights and obligations, therefore the entitlement to tax benefits should have been examined in respect of the plaintiff. In determining the true purpose of the transactions that serve as the grounds on which tax benefits can be granted, the court should take into account the nature of the transaction, as well as the legal, economic and personal relations between all the economic actors concerned, however, the primary purpose of the transaction should be established on the basis of the interests of the taxpayer who wishes to obtain tax benefits. In the present case, the plaintiff's proceeds represented a considerably smaller amount than the tax benefits, hence it can be stated that the plaintiff predominantly sought to realise these benefits. Based on the correct interpretation of the relevant legal provisions, the Curia also found that the transaction qualified as a misuse of taxpayer rights, even if the transacting parties had not exclusively aimed at obtaining tax benefits. Consequently, these benefits were revoked.

Budapest, the 18th of November 2013

Administrative and Labour Department of the Curia of Hungary