

Communication concerning the decision of the Curia of Hungary
in administrative case n° Kfv.VI.35.633/2012

A company, the plaintiff in the present case, handed over roads and public utilities attached to the apartment houses that it had constructed to the self-government free of charge, in relation to which it submitted the value added tax return.

In its decision the first-instance tax authority did not examine the value added tax and imposed a fine of 20.000,- HUF on the plaintiff.

In its appeal the plaintiff complained that, during its tax investigation, the tax authority failed to disclose the overpaid tax, as it calculated mistakenly the value added tax to be paid for the facilities that it had handed over free of charge. The second-instance tax authority upheld the first-instance decision.

The tribunal quashed the decision of the tax authority, the defendant of the case, and ordered it to conduct a new proceeding. The tribunal argued that the defendant misinterpreted Article 11, paragraph (1) of Act CXXVII of 2007 on Value Added Tax, when it did not find it necessary to examine non-business purposes.

Based on the petition for judicial review submitted by the defendant, the Curia upheld the decision of the tribunal but changed its reasoning. It interpreted Article 11, paragraph (1) of the Act on VAT in conjunction with Article 16 of Council Directive 2006/112/EC on the common system of value added tax and it also took into account judgements C-184/04, C-371/07 and C-210/11 of the European Court of Justice. While the tax authority, the plaintiff and the tribunal interpreted Article 16 of the Directive and Article 11, paragraph (1) of the Act on VAT as requiring three conditions to be met in order that a transaction be considered a supply of goods for consideration, the Curia stated that only two such conditions have to be met. Article 16 of the Directive and Article 11, paragraph (1) of the Act on VAT have a bearing on no other products than those that the taxable person withdrew from his business for his private use or that of his employees.

Budapest, the 18th of November 2013