



News

Further information:

Miklós Scheibelhoffer

Tel: 887-6536

e-mail: miklos.scheibelhoffer@kpmg.hu

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Local Business Tax not found invalid by the ECJ

The European Court of Justice (ECJ) decided that Local Business Tax (LBT) is not prohibited under the relevant community legislation

In accordance with the expectations of KPMG tax experts, LBT, which has nevertheless been justifiably criticized in many ways, will not be abolished as a consequence of the case brought before the ECJ. In this respect, it is clear that taxpayers taking no legal steps against LBT followed the most effective strategy.

Many Hungarian enterprises appealed to the ECJ, claiming that LBT should not be due on the basis that its essential characteristics are very similar to a turnover tax, and hence it should be caught by the prohibition in the sixth VAT directive. The ECJ has now investigated the issue in the course of one legal procedure, and decided that LBT corresponds to EC law.

KPMG suggested revising any legal steps taken against LBT from the very beginning. Numerous Hungarian enterprises had nevertheless taken legal steps against LBT arguing that this levy is in conflict with EC law, and so hoping to get a refund of already paid taxes. When defining our position in this case, we considered both the reasonableness and risks of taking any steps against LBT. Furthermore, we also took into account that even if LBT had been abolished on a retroactive basis, the challenged amounts of LBT are unlikely to have been refunded. This is based on the fact that the amount of tax paid could only have been successfully reclaimed by taxpayers upon which the tax burden really fell. Even if the ECJ judgment would have classified LBT as a prohibited tax, most likely the “final customers” have been regarded as the persons upon which the tax burden is effectively imposed. Consequently, enterprises reclaiming already paid LBT would not have been entitled to any tax refunds.

In the light of available EU case law (including the recent and similar ECJ decision in the IRAP¹ case); it was very likely that LBT would not be challenged by the ECJ. Furthermore, it was also to

¹ In the IRAP case (C-475/03), Italian taxpayers took steps against an Italian levy (i.e. IRAP) stating that it was a prohibited turnover tax and so it should be abolished. In its judgment, the ECJ decided that IRAP is not a prohibited turnover tax under EU law.

be anticipated that any applications for a tax refund would be unsuccessful even if a decision against LBT was obtained. According to the above reasoning, our position (which was based on careful consideration and our professional experience) was that it was not worth undertaking even minor risks (e.g. concerning default penalty, tax penalty) in submitting such a speculative appeal.

Similar to the period following the decision in the IRAP case, we believe this decision might give rise in some quarters to suggestions of the decision being reached by reference to “political considerations”. KPMG believes that any statements undermining the reputation of such a significant institution of the EU as the ECJ would be entirely unfounded. It is clear that there are numerous past examples of the ECJ deciding in favor of taxpayers, even if such a judgment led to financial impacts far in excess of the potential effects of the LBT case.

Furthermore, we would also like to highlight that this judgment is only limited to the investigation of the similarity of LBT to turnover taxes; hence it cannot be regarded as a general opinion on this tax. We still believe that LBT is one of the least effective levies in Hungary disregarding as it does the profitability of enterprises. As a consequence, we believe that the imposition of LBT has a negative effect on Hungary’s competitiveness which could be eliminated through a radical reform of LBT or its abolition.

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