

**Whether a financial institution may carry out invoicing service as an authorised representative?**

**On the basis of the resolution made September 2016 of the National Bank of Hungary, neither financial enterprises nor credit institutions may carry out invoicing service as an authorised representative separately on a businesslike basis. The resolution basically examined this question on the side of financial enterprises, although it can be stated on the basis of its content that both credit institutions and financial enterprises, namely all the financial institutions are subject to the resolution.**

Firstly, the resolution of the National Bank of Hungary points out relating to the question that according to its resolution, the invoicing service carried out as an authorised representative cannot be ranked separately among the business activities that the financial institutions can carry out beyond the financial services on a businesslike basis. Accordingly, the aforementioned activity separately cannot be classified within the scope of the enlisted activities specified in order to ensure the requirements specified in Section 7(3) of Act on Credit Institutions and Financial Enterprises therefore, secondly, according to the resolution of the supervision, it is necessary to examine its business attitude relating to service. The requirement specified in Section 7(3) of Act on Credit Institutions and Financial Enterprises intends to ensure that a financial institution may carry out specified activities exclusively on a businesslike basis although if a service is not qualified as business activity then its performance does not breach the requirements specified in Section 7(3) of Act on Credit Institutions and Financial Enterprises and it is qualified as a business activity that can be carried out by any of the financial institutions.

In connection with the examination of businesslike attitude, three circumstances must be examined relating to the activity whether the activity in question is qualified as an activity performed (i) for compensation in order to gain profit or assets, (ii) for entering into businesses not specified individually, (iii) on regular basis.

The referred resolution of the National Bank of Hungary assumes in the absence of any other information from the person asking for the resolution that the invoicing service would be carried out for gaining profit in particular having regard to that under the Section 160 (2) of Act on VAT, this service creates joint and several liability on the part of the issuer of the invoice for the performance of the requirements regarding invoicing.



The National Bank of Hungary points out relating to the unspecified businesses in advance and to the performance of regular business activity furthermore - in accordance with its previous resolutions – that there is a strong logical link between the two elements according to its resolution. According to the standpoint of the National Bank of Hungary, there is no regularity in case of individually specified businesses (having regard to that such businesses may be considered as individually specified businesses which are individually specified in advance in all respects, so for example, the value and characteristics of business, the person of the contracting parties of businesses and on the basis of the conditions of the performance.) Relating to the elements of fact which are inherent in the concept of businesslike attitude, the standpoint of the National Bank of Hungary only presumes for the lack of information that the financial enterprise would carry out invoicing service more than on a single occasion or for more than a single obligor but it would carry out it on several occasions in case of such claim. On the basis of this presumption, according to the standpoint of the National Bank of Hungary it can be presumed that it is about invoicing service performed on a businesslike basis.

In conclusion, having regard to that invoicing service by a financial institution cannot be pursued separately as a businesslike activity due to the requirements specified in Section 7(3) of Act on Credit Institutions and Financial Enterprises, furthermore the National Bank of Hungary presumes the businesslike attitude of the aforementioned activity, financial institutions may not carry out the service in question according to the standpoint of the National Bank of Hungary. It is essential to emphasize that the resolution of the National Bank of Hungary was issued for a specific request, which could not contain the necessary information according to the resolution, therefore the resolution is based on a number of assumptions, furthermore it endeavours to answer the question above as a starting point with regard to the carrying out of the service generally and separately.

In light of the above, the general statements of the resolution must be carefully treated and their applicability may and is necessary to be judged on the basis of the special details of the case at the examination of the specific cases.

Furthermore, it requires special attention and specific consideration if the issue of invoicing service provided as an authorised representative is otherwise connected to an authorised business activity, which does not fail to fulfil the requirements specified in Section 7(3) of Act on Credit Institutions and Financial Enterprises rather than connected directly. It is laid down in former resolutions of the supervision, among others, that the requirements specified in Section 7(3) of Act on Credit Institutions and Financial Enterprises are aimed at ensuring that the risks arising from financial services carried out by financial institutions, having major significance from economic and social points of view- do



not mix with such risks arising from other activities, the assumption and management of which are governed by significantly more flexible and permissive rules. The aforesaid risks shall be managed in accordance with the statutory regulations establishing rules that are different from those relating to any other activities and much more stringent in respect of the assumption and management of risks. The former resolution of the supervision also lays down that it is particularly important for financial enterprises to comply with the rules of requirements specified in Section 7(3) of Act on Credit Institutions and Financial Enterprises as a possible loss will also affect the conditions for further continuation of financial services, in particular, regarding capital requirements and finally, it may jeopardize the repayment of deposits.