

Interest of late payment - the uncertainty is over

Since the new Civil Code of Hungary entered into force, the provision of interest of late payment caused continuous problems as the conflict between legislation and practise was almost indissoluble from accounting and taxation perspectives.

The situation was worsened by the conflict between the applicable regulation and the EU directives it is based on. The legislature had already acknowledged that in last October and made a new legislation which was approved on 14th March 2016 by the Parliament. In this manner, companies may compose their annual reports for 2015 along the new regulation.

The regulation on interest of late payment was removed from the Civil Code and was incorporated to a specific act which suits more to the Directive 2011/7/EU of the European Parliament on combating late payments in commercial transactions.

Amendments to personal and material scope

The new legislation clearly records that it is only applicable for cases between business parties or among companies and contracting authorities, and only in case of fulfilment of monetary claims based on commercial transactions between the parties.

What is considered as commercial transaction?

The new legislation, complying with the provisions of the Directive, considers transactions as commercial transactions if the subject is sale and purchase of goods against payment or provision of services.

Entitlement instead of obligation

It is a major change in comparison with the provisions of the Civil Code that the new legislation qualified obligation into entitlement. According to the previous regulation the payment of interest of late payment was the debtor's obligation, according to the new Act the creditor may claim for interest of late payment. The creditor may claim for interest of late payment within one year peremptory deadline starting with the occurrence of delay in payment.

The due date of claim in case of voluntary performance is the aforementioned deadline, in default of voluntary performance it shall be the date of the first demand for payment for the fulfilment. The provisions of the new Act must be applied for delay in fulfilment of liability for payments based on commercial transactions concluded prior to its entry into the force. Nevertheless the peremptory deadline starts from the entry into the force of the Act.

If the creditor has already waived of his claim until the entry into the force of the Act or his demand has terminated for other reasons then this kind of delay cannot be considered an existing condition, consequently deadline of one year cannot be applied for the enforcement of the claim.

In compliance with the above, Subsection (56). is implemented to Section 177 of the Act on Accounting, according to which, business party presents in the accounting records (in balance of sheet) his liability for interest of late payment simultaneously with the entry into the force of the Act if the creditor did not claim it from him by the date , it will be eliminated against other revenues.

Those who presented their obligation for interest of late payment based on the previous legislation their obligations for interest of late payment, which were presented at the entry into force of the new legislations and not claimed by the creditor by this date is eliminated against other revenues, being exempted from the obligation to self-reporting both accounting and taxation point of view.

The obligation relating to issue of waive notice is dissolved; the creditor may freely decide on claiming for interest of late payment in the event of its delayed payment by the debtor. The new Act implements the previous regulation of the Civil Code on the exculpation of the delayed payment.

In this context, the business and contracting authority is not obliged to the payment of interest of late payment, if the debtor provides compensation to the creditor during the enforcement of legal claim, in other words, the claim for interest of late payment to obtain from the debtor lead to pending litigation with regard to the obligation, since the debtor has only the possibility to provide compensation and to exempt the liability for the payment of monetary claim during the enforcement of legal claim.

The amount - what remained unchanged

The amount of interest of late payment equals to 40 Euros exchanged by the central exchange rate of the National Bank of Hungary in effect on the first day of the period the interest of late payment is charged for.