

Issuing an Invoice Retrospectively? – The Kúria Confirmed That This Qualifies Not as Late Performance but as a Failure

A recent individual decision of the Kúria conveys an important message to taxpayers: if an invoice is not issued within the statutory deadline, its subsequent issuance is not to be regarded as late performance, but as a failure to comply with the obligation. Consequently, the possibility of excusing the delay is not available to the taxpayer. Below, we briefly outline the background of the case and the significance of the decision.

Brief Summary of the Underlying Case

The claimant operated a website through which customers could order retail products with home delivery. After placing an order, a “personal shopper” purchased the selected goods in-store and delivered them to the consumer.

The tax authority conducted a test purchase. During the order process, the auditors prepaid for the goods and the delivery fee by bank card. Upon delivery, however, they received only a receipt for the purchase of the products; the electronic invoice relating to the delivery service was not provided at the time of performance, but only five days later.

On this basis, the tax authority imposed a default penalty for failure to comply with the receipt/invoice issuance obligation, relying on Section 163(1)(a) and Section 163(2)(b) of the Hungarian VAT Act. According to the authority’s reasoning, the taxpayer should have fulfilled its invoice or receipt issuance obligation at the latest by the time of performance. The taxpayer also lost its eligibility for KIVA (small business tax) status, which it considered a disproportionate sanction, and therefore initiated judicial proceedings.

The Taxpayer’s Defence

The company argued that it had ultimately issued and sent the invoice, complying within a “reasonable time limit” (eight days) under Section 163(2)(c) of the VAT Act. It maintained that it had not committed any infringement. Alternatively, even if a violation were established, at most a delay in fulfilling the document issuance obligation could be determined. In its view, the general penalty provision under Section 220 of the Hungarian Act on the Rules of Taxation (Art.) should apply, under which an excuse for delay may be accepted.

Findings of the Final Judgment

The court delivering the final judgment held that the invoice had not been definitively omitted, but merely issued late. It found that the tax authority had failed to explore circumstances favourable to the taxpayer, including whether the delay had resulted from an erroneous interpretation of the law — namely, that the taxpayer had considered Section 163(2)(c) of the VAT Act applicable to its case. The court therefore ordered the first-instance tax authority to conduct new proceedings.

The Kúria’s Decision: No Such Thing as “Late” Invoice Issuance

Upon review, the Kúria held that if an invoice is not issued within the deadline prescribed by the VAT Act, a failure to comply is established; this cannot be subsequently “remedied” by sending the invoice at a later date and thereby reclassified as mere delay.

The failure is not rendered nonexistent by the fact that the taxpayer may have been mistaken regarding the applicable deadline, having relied on an incorrect legal interpretation and applied a later deadline than the one governing its case.

In the case at hand, the occurrence and sanctionability of the failure were not affected by the circumstances to which the lower court had mistakenly attributed significance. It was therefore irrelevant that the taxpayer later sent the electronic invoice for the service, or that this may have occurred because it had incorrectly relied on the deadline set out in Section 163(2)(c) of the VAT Act.

The Kúria further emphasised that Section 220 of the Act on the Rules of Taxation — including the possibility of excusing delay under Section 220(3) — applies only where legislation does not provide otherwise. Compared to this general penalty rule, Section 228 of the Act constitutes a special provision. Since Section 228 does not regulate late performance in relation to the receipt/invoice issuance obligation, pursuant to Section 228(1)(a) the tax authority may impose a default penalty if the taxpayer fails to fulfil its receipt/invoice issuance obligation. In such cases, Section 220 does not apply, and therefore excusing the delay is not possible.

On this basis, the Kúria, acting under Section 121(1)(a) of the Code of Administrative Litigation, set aside the final judgment and ordered the previously acting court to conduct new proceedings and adopt a new decision.