

# Enforcement of EU tax law and legal remedies – theory and practice in Hungary

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J A L S O V S Z K Y

# OVERVIEW

- Ways to enforce EU tax law
  - Directly – no decision yet
  - Directly – already decided
  - State liability issues
  - When all else fails: EU Commission
- Case studies
  - Against all odds – a major tyre producer
  - Against the Curia – the Signum Alfa Sped Case
  - Against the tide – no way past the Curia



# DIRECT ENFORCEMENT – NO DECISION YET

- Self-assessment system
- Non-declaration is pending risk
- Risk of sanctions and uncertainty
- Special self-revision due to incompatibility with EU (tax) law
- Decision in 15 days
- Appeal → court → CJEU (?)
- Non-self assessed taxes?



# DIRECT ENFORCEMENT – ALREADY DECIDED

- Reimbursement claim
- 180 days – non-remediable
- Number of special conditions
- To be reimbursed in 30 days
- Interest: single – equivalence of EU law?



# DIRECT ENFORCEMENT – ALREADY DECIDED (CONT.)

- Special rules for denied deduction of VAT
  - VAT must be self-revised in 180 days
  - If already audited: request for repeated audit
  - To be reimbursed in 30 days
  - Interest: single (equivalence issues)



# WHEN ALL ELSE FAILS: THE EU COMMISSION

- Could be slow
- Sometimes efficient, though:
  - Two special taxes: food-chain supervisory fee and healthcare contribution for tobacco companies
  - In breach of EU state aid rules (heavily progressive on turnover, no justification)
  - Both introduced in beginning of 2015
  - July 2015: Hungary asked to „suspend” the taxes
  - Both repealed (in 2015 and 2016, respectively)
  - The „Hervis” decision looming in the background

# STATE LIABILITY

- Brasserie / Factortame / etc.
- Principle of effectiveness, and of equivalence
- Hungary → the opposite
  - Domestic level: court practice undecided
  - EU law: „acte clair”

# CASE STUDY 1 – A MAJOR TYRE PRODUCER

- 2004 – 2005
- Non-deductible input VAT → state subsidy
- CJEU: C-74/08 („Parat” – decision)
- 180-day reimbursement rule invoked by taxpayer





# CASE STUDY 1 – A MAJOR TYRE PRODUCER (CONT.)

- Audited period → request for repeated audit
- Request dismissed → „res iudicata”
- No effective remedy due to procedural rules
- Last resort: civil law liability for wrongful acts of the authorities
- 1 in 20!

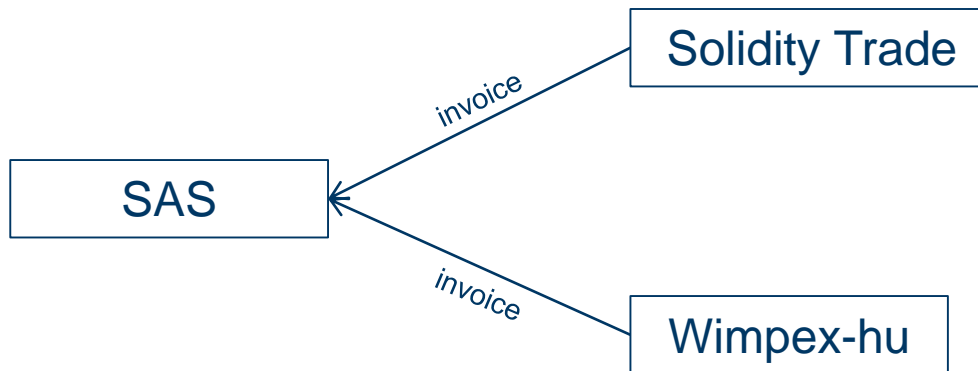


# CASE STUDY 1 – A MAJOR TYRE PRODUCER (CONT.)

- We win – in 2016 (!)
- Basis: domestic rules
- Court also confirms liability based on EU law
- Moral: there is more than one way to skin a cat



# CASE STUDY 2 – THE SIGNUM ALFA SPED STORY



# CASE STUDY 2 – THE SIGNUM ALFA SPED STORY (CONT.)

- HTA: the services have been provided, but not by ST/W-hu
- The invoices are „untruthful” → no right to deduct



# CASE STUDY 2 – THE SIGNUM ALFA SPED STORY (CONT.)

- 1st instance court: HTA is wrong, goes against CJEU-practice
- Curia: 1st instance court is wrong, if invoice is „untruthful”, no further analysis is needed
- 1st instance → CJEU
- CJEU → Curia is wrong (C-446/15)
- (case not finally decided yet...)



# CASE STUDY 3 – THE TELECOMS TAX

- Heavily progressive special tax (on turnover) introduced in 2010
- UPC (?) tries to challenge in two ways:
  - (1) Invokes special self-assessment tool due to breach of EU law
  - (2) When audited, asks the tax authority to cancel its tax liability
- Curia:
  - (1) not good → not all relevant EU rules were highlighted
  - (2) not good → circumvention of the self-assessment rules
- Moral: don't mess with the Curia, they know best!



Thank you!

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