TO OUR READERS

In our second issue of the DR Insider, we would like to draw your attention to some new developments in the field of arbitration in Austria, the Czech Republic and Slovenia. Major rule changes in these CEE jurisdictions show very interesting and sometimes demanding procedural steps for parties involved in arbitration proceedings.

In addition, we have tips on how to preserve your right to the costs of court proceedings under the Czech Republic’s procedural code and a very interesting article regarding the role of medical court experts in Austrian proceedings.

Further, we report on a successful client outcome handled by our Vienna IP/IT team, which will assist the owners of trade secrets in the future with a legal means to efficiently fight the misappropriation of trade secrets by third parties.

With regard to recent fraud news, we explain how to mitigate the risk of a fake president fraud, and our Bucharest office reports on a landmark court decision affecting taxpayers.

Last but not least, please take a minute to scroll through some recent Austrian supreme court decisions. We hope that you enjoy it.

Best regards,

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ARBITRATION

INVESTMENT TREATY CLAIMS BY DUAL NATIONALS

In recent years, a new type of claim has been emerging in the field of investment treaty arbitration, whereby investors initiate proceedings against their own state before an international arbitration tribunal. As the ICSID Convention expressly excludes individuals that hold the nationality of the state party to the dispute from the jurisdiction of a tribunal established pursuant to the ICSID Convention, some individuals have started proceedings against their own state before arbitration tribunals constituted pursuant to UNCITRAL Arbitration Rules. Typically, claimants in such cases are those who hold two or more nationalities, including the nationality of the state party to the dispute.

The issue of standing of a dual national under a given bilateral investment treaty was tested for the first time in Garcia Armas v. Venezuela, a pending UNCITRAL arbitration proceeding initiated against Venezuela by two Spanish nationals who also held Venezuelan nationality. The tribunal upheld jurisdiction on the ground

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that the bilateral investment treaty applicable to the dispute did not exclude dual nationals from protection. The tribunal further relied on Article 31 of the Vienna Convention on the Law of Treaties and to previous decisions of investment tribunals to conclude that in the absence of express limitation, it was “not possible to devoid of effect the nationality granted freely by a State and accepted as valid by the other”. The tribunal denied the application of the test of “dominant and effective nationality” applied in customary international law in the field of diplomatic protection which considers as foreign dual nationals those who have a stronger tie with the nationality of their adopted country. The tribunal held that such principle is not applicable in the context of investment treaties.

The most recent example of proceedings initiated by dual nationals is Dawood Rawat v. the Republic of Mauritius filed on 9 November 2015 by a French Mauritian dual national under the France-Mauritius Bilateral Investment Treaty. There, the claimant alleges that since the bilateral investment treaty applicable to the dispute does not exclude dual nationals from its scope, he should not be prevented from bringing a claim against Mauritius.

In this respect it is important to note the expansive definition of “investor” in Article 1(7) of the Energy Charter Treaty which is drafted to include also individuals who are “permanently residing” in a contracting party. To our knowledge, a claim has been filed by Cem Uzan, a Turkish businessman and politician, against the Republic of Turkey pursuant to UNCITRAL Arbitration Rules (Cem Uzan v. Republic of Turkey) based upon the Energy Charter Treaty. Cem Uzan alleges that at the time the Turkish Government took away his energy investments, he had permanent residence and a working permit granted by the United Kingdom.

Article 201 of NAFTA contains a similar expansive definition of “national”, whereby permanent residents are considered as nationals for the purposes of NAFTA. Thus, in Feldman v. Mexico, the claimant who was a US citizen by birth but resident in Mexico for the last 27 years of his life had standing to sue Mexico with reference to the Article 201 of NAFTA. The tribunal in Feldman stated that “permanent residents are treated like nationals in a given state party only if that state is different from the state where the investment is made”.

It remains to be seen which approach international tribunals will be taking in deciding claims by dual nationals. While the abuse of rights conferred under investment protection treaties must be prevented, the potential effects of denying investment treaty protection to immigrants, who acquired their wealth elsewhere and could potentially invest into their country of origin, must be taken into account.

**ARBTRATION AND FAST-TRACK ENFORCEMENT IN SLOVENIA: FRIENDS AT LAST**

Slovenia has long sought to be considered an arbitration-friendly place. The New York Convention has been a part of Slovenia’s legal system since its ratification in October 1981 by the former Yugoslavia, which Slovenia succeeded. In 2008, a modern Arbitration Act was adopted on the basis of the UNCITRAL Model Law, which unified the rules for both domestic and international arbitrations. In recent years, national courts have also warmed up to arbitration and began supporting it in every possible way.

Oddly enough, one aspect lagged: Enforceability of arbitration agreements after initiation of fast-track enforcement.

In addition to ordinary enforcement proceedings (initiated on the basis of an enforceable title, such as judgments or arbitral awards), the Slovenian Civil Claims Enforcement Act provides for enforcement on the basis of authentic documents (“fast-track enforcement”). A creditor may initiate such proceedings merely by designating an authentic document (usually invoices), and the enforcement court will immediately, without assessing any facts or reviewing any documents, issue a writ of execution. In cases where the debtor objects, the writ is rescinded, the matter is automatically referred to competent courts for litigation proceedings, and the full court fee is payable.

**HIGHLIGHTS FROM THE AUSTRIAN SUPREME COURT**

In a recent judgement (3 Ob 187/15v), the Austrian Supreme Court held that lawyers are expected to read contracts they are about to sign and to understand the economic risks of loans. In the present case, a lawyer with more than 10 years of professional experience, upon the recommendation of a bank, took out a foreign currency loan. The bank duly explained that the loan was exposed to a currency risk. The bank, however, did not mention that according to the written agreement, the loan was also exposed to an interest-change risk. On this basis, the lawyer, after those risks materialized and lead to high losses, claimed that the bank infringed its duty to inform him. According to the Supreme Court, such risks correspond to the basic economic knowledge and training expected from lawyers. Moreover, such a risk must be evident for a lawyer. The bank could therefore rightfully rely on the fact that a lawyer does not need to be informed about every detail of a loan agreement. The lawyer should have read the contract more thoroughly.

Caroline Homan
And there lay the catch: By filing for fast-track enforcement, does the creditor waive the arbitration agreement? This certainly would not apply to (domestic) choice of court agreements, where the creditor has the option to refer to it in the application. Was there anything a creditor could do or have done to avert national courts and instead go to arbitration? According to some courts, the answer is no. The creditor was deemed to have waived the arbitration agreement, got stuck litigating the matter in the Slovenian courts, and became liable for payment of the full court fee. In the best case scenario, claimants could only withdraw the claim (without prejudice) if the respondents consented, and even in such cases, only two thirds of the court fees would be returned. An express reference to an arbitration agreement in an attachment to the application for fast-track enforcement or a side-letter was not even enough to persuade some courts. The web form and developer’s decision on what fields to include in the application prevailed.

In essence, what began as an entirely technical matter – a deficiency of the online application used for the filing of fast-track enforcement proposals, which only allowed reference to be made to (Slovenian) court selection agreements – resulted in serious adverse legal consequences. In 2015, this deficiency was finally recognized by the National Assembly. The law was amended to expressly give creditors a right to refer to arbitration agreements, the web application was supplemented, and as of 15 July 2015, creditors were finally able to clearly inform the court that in cases where the debtors object to the writ of execution (and even if they do not challenge jurisdiction of the Slovenian courts), the enforcement court should dismiss the matter (without prejudice) instead of referring it to other competent Slovenian courts.

Thus, Slovenia made another – small yet important – step towards being recognized as an arbitration-friendly jurisdiction. Perhaps unintentionally, by adopting the described amendment, the legislature granted additional favourable treatment to arbitration agreements over choice of foreign court agreements: the latter were not addressed and are apparently still incompatible with fast-track enforcement.

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**SIGNIFICANT CHANGE TO CZECH ARBITRATION RULES – PARTIES BEWARE**

The Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (“Arbitration Court”) is the only arbitration court in the Czech Republic established by law which has general competence to decide arbitration disputes. This makes it a primary “go-to” place when arbitrating in the Czech Republic.

For this reason, it comes as no surprise that an amendment to the Rules of the Arbitration Court (“Rules”) caused a bit of an uproar in the Czech arbitration community, especially when the Rules are rarely amended compared to legislative amendments.

**Major changes to the rules**

The amendment to the Rules came into effect on 1 October 2015. The amendment brought a vast array of changes - 21 in total. Although some of them are purely technical in nature, some changes are of major significance from the perspective of parties to arbitral proceedings.

Common to all changes is an effort to clarify certain muddy provisions and ensuing questions of interpretation and to provide for more expedited and efficient proceedings before the Arbitration Court.

**Oral hearings at risk?**

One significant change concerns oral hearings and their admissibility in the arbitral proceedings before the Arbitration Court.

Arbitral proceedings conducted before the Arbitration Court are by default conducted orally. However, the Rules historically allow for the arbitral proceedings to be conducted without oral hearings, only on the basis of written submissions and evidence by the parties to the arbitral proceedings if they agree in writing. The only exception to this...
rule applies in cases of consumer arbitral proceedings because of a special level of protection consumers enjoy under Czech (and European) law. Such a provision is not in itself harmful to the interests of the parties and similar provisions can be found in arbitral rules of many arbitration venues (such as in the Rules of Arbitration and Mediation of the Vienna International Arbitration Centre).

A major new change to the Rules is that an arbitral tribunal may now invite the parties of the arbitral proceedings to express if they agree that the arbitral proceedings be conducted without oral hearings. The invitation can be made at the sole discretion of the arbitral tribunal (with the only exception being the consumer arbitral proceedings when such an invitation is not available at all) and the parties must be given a time limit by the arbitral tribunal which cannot be less than 10 days to express their position. This amendment changes the landscape of arbitral proceedings since the power to suggest written-only arbitral proceedings is now taken away from the sole discretion of the parties and is newly shared with the arbitral tribunal.

Such a change alone would not be of major significance; however, since it is combined with another change to the Rules, which introduces a presumption of consent with written-only arbitral proceedings when a party does not express otherwise within the time limit, it becomes of great importance. This means that a party to the arbitral proceedings who does not pay close attention to each procedural step of the arbitral proceedings, may easily find themselves in an unwanted position because they did not expressly agree on written-only arbitral proceedings with the opposing party or the arbitral tribunal.

On a par with others?

To ascertain the nature and significance of the above changes to the Rules, we can look at similar provisions of the Rules of Arbitration and Mediation of the Vienna International Arbitral Centre ("VIAC Rules") which represent a benchmark in the CEE region.

The VIAC Rules stipulate that an arbitral tribunal may decide whether the arbitral proceedings will be conducted orally or in writing only if the parties to the proceedings did not agree otherwise. In addition, the VIAC Rules give a strong preference to oral hearings by stipulating that upon a request of only one party, oral hearings will be conducted unless the parties expressly excluded oral hearings in advance.

If we compare the VIAC Rules to the amended Rules, we can clearly see that the former adopt a more party-oriented approach, resting the powers to decide whether the proceedings will be conducted orally or in writing with the parties.

Conclusion

We can conclude that the aim of the changes to the Rules is to make arbitral proceedings more expedited and efficient. This should certainly be welcomed by parties to arbitral proceedings.

However, a different approach between the Rules and the VIAC Rules to conduct written-only proceedings has to be noted by the arbitral parties when planning their legal defence. Which approach is better is hard to tell as each of them has its own advantages and pitfalls. Most important is that changes made to the Rules definitely place higher demands on the parties which require them to pay close attention to the arbitral proceedings and respond in a timely manner to every invitation of the arbitral tribunal.

HIGHLIGHTS FROM THE AUSTRIAN SUPREME COURT

THE PRINCIPLE OF TRUST ON THE SKI SLOPE

In keeping with the season, the Austrian Supreme Court recently reiterated that skiers can rely on the principle of trust (8 Ob 90/15a).

However, this principle does not apply to children. Based on that fact, a 7-year-old boy claimed damages for his injuries resulting from an accident with a snowboarder. The boy crossed the path of the snowboarder after having taken a short break on the slope.

Naturally, one would assume that the accident was the boy’s fault – but what about the principle of ‘don’t trust children? The Supreme Court, understanding the difficulties for snowboarders on slopes with little down-grade where the danger of grinding to a halt is very high, held that the principle of consideration towards others – especially children – may not be overstated to ensure skiing enjoyment without fearing every child that comes across a ski slope. The Court said it is not possible to watch or predict every move of children on the slopes. Therefore, the 7-year-old boy bears the sole responsibility and the claim is dismissed.

CRIMINAL LAW

FRAUD NEWS

The "Fake President" Fraud - How to Mitigate the Risk

In recent months, numerous European companies reported that they were victims of the so-called fake president fraud. French businesses are said to have lost an estimated EUR 465 Million since 2010
According to a statistic of the FBI's internet crime center or IC3, a loss of over $1.2 billion was reported worldwide from October 2013 to August 2015 in connection with this fraud scheme (see: http://www.ic3.gov/media/2015/150827-1.aspx).

"Fake President" fraud or "Your President is calling"

What is a "fake president" fraud? This fraud scheme is based on a rather simple but highly effective scenario. Often the fraudsters use a bogus email address of the management staff within the company, such as the CFO or CEO. Then they contact an employee of the company by email or by phone and persuade him or her that an immediate and urgent transfer of monies from the company's bank account to another foreign bank (often an offshore destination) has to be made. In order to persuade the employee to execute the payment, the "fake president" tells the employee that he or she was chosen because he or she has performed so well in the past and he or she enjoys the full confidence of the "fake president" to manage this "challenging" and "time critical" situation. The employee is usually requested to keep everything "confidential" and not to talk to others about this matter because otherwise a not yet disclosed "important deal or transaction" could be "endangered".

How to mitigate the risk

What can be done to protect a company and to avoid the risk of such an incident?

- Employees should be made aware about the "fake president" fraud and similar social engineering schemes and should be trained on how they can prevent becoming a victim of such fraudsters.

- A company should have robust guidelines and processes in place on how payment transactions have to be handled.

- A financial authority limits policy should be in place that provides employees clear direction with respect to the approval process.

- If possible, no payment instructions (at least not above a certain amount) should be given by phone or by email.

- A company should regularly review the information the firm makes public on its website or in social media, such as employee positions, email addresses, and phone numbers and should consider to remove employees who are working in crucial areas, such as the financial department.

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CIVIL PROCEDURE

PREVENT YOUR RIGHT TO COLLECT COSTS – ALWAYS FILE PRE-TRIAL REQUEST

Based on individual jurisdictions, there are basically two principles that apply regarding who bears the cost of court proceedings. It is either the "American rule" principle, in which each party bears its own costs irrespective of which party was successful in the case or "the losing party pays" principle. According to Czech law, the latter principle applies. However, even success in a case does not necessarily mean that the winning party can claim all costs incurred in connection with the proceedings.

In the Czech Republic, the amount of costs for court proceedings that can be claimed by the winning party is stipulated by law based on the value of the dispute. The amount of the costs may therefore in individual cases significantly differ and this amount in most cases will not cover all the incurred costs.

More importantly, according to the Czech Civil Procedure Code, before filing a petition with the court, a plaintiff must send the defendant a so called "pre-trial request". If the plaintiff fails to do so, or if the pre-trial request does not contain all formal and material requirements, the plaintiff will not be entitled to court costs even if he or she was successful on the merit of the petition.
Each pre-trial request must include:

1. **What and why?** - Information on the due obligation and its title. The pre-trial request should be in this respect considered as a “small petition”.

2. **Dispatch, not delivery** - It is sufficient to send the pre-trial request to the last known address of the debtor. Although a pre-trial request in the form of an e-mail may be sufficient in some cases, it is highly recommended to send the request via registered post, as the plaintiff may be later obliged to prove the dispatch of the request before the court.

3. **7-day period** - The plaintiff has to send the pre-trial request at least 7 days prior to the filing of the petition.

4. **The petition threat** - It has been interpreted by the Czech courts that the pre-trial request has to contain an explicit threat that in case the debtor does not fulfil his obligation in the given period, the plaintiff will file a petition with the relevant court.

If the circumstances of the case justify it, the court may at its discretion grant the plaintiff the right to the costs of the proceedings even if the plaintiff failed to send the pre-trial request. This may happen for example in cases where the plaintiff acquired a receivable just before the end of the statute-barred period and the required seven days would lead to expiry of such period.

The pre-trial request is a necessary prerequisite only for the right to the costs of the proceedings. Even if the pre-trial request is not sent, the plaintiff may still be successful on the merits of the petition.

**Therefore, it is highly recommended to send a pre-trial request before the filing of every petition, including arbitration petitions.**

**IP/IT LITIGATION**

**Fighting the Misappropriation of Trade Secrets**

Information, knowledge, inventiveness and creativity are the raw materials of the economy in the coming years. Enterprises, irrespective of their size, value trade secrets as much as patents and other forms of intellectual property rights and use confidentiality to foster business competitiveness and research innovation. Trade secrets cover a wide range of information, which extends beyond technological knowledge also to commercial data such as information on customers and suppliers, business plans or market research and strategies.

European enterprises, however, are also increasingly exposed to the misappropriation of trade secrets, committed by competitors or even their own employees. Once such misappropriation surfaces, enterprises must act promptly to stop further leakage of information and to prevent the unlawful use and further disclosure of misappropriated trade secrets by third parties. At the early stages of each investigation of IP-theft, time is always of the essence.

In a recent decision, the Austrian Supreme Court had to decide on the level of detail a plaintiff has to present to the court, when applying for an interim injunction prohibiting the use of trade secrets. In the subject case counselled by the author, employees had downloaded several thousands of critical files before leaving the client’s enterprise for employment by a direct competitor. The downloads had been protocollly by a so-called “data loss prevention software” (DLP-software) and categorized in critical data (red) and non-sensitive information (green). Since an exact description of each individual file was not reasonable, given the time pressure, Wolf Theiss decided to identify striking examples for trade secrets misappropriated and to rely on the automated categorization done by the DLP-software for the rest, when applying for the interim injunction.

The court of first instance accepted the application and issued an interim injunction.
prohibiting the former employees from using the files so identified. The defendants fought the decision in two instances, basically arguing that the reference to the categorization of the DLP-software was not detailed enough in order to allow for a proper defense and that an interim injunction prohibiting the use of trade secrets identified by files only, would only shift the dispute to the enforcement proceedings. The Austrian Supreme Court, however, confirmed the decisions of the lower courts and held that for the purpose of preliminary proceedings, the applied level of substantiation was sufficiently detailed to identify the trade secrets (9 ObA 93/15i).

Even though the Supreme Court’s decision is limited to the subject case, it will presumably help other owners of trade secrets in the future to efficiently fight misappropriation by legal means in due time. Moreover, the case also suggests that not only legal means, but also compliance software, such as the DLP-software, will play an increasingly important role in the prevention and documentation of IP-theft in the future.

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FOCUS:  
LIFE SCIENCES & HEALTH CARE  
LIABILITY OF MEDICAL COURT EXPERTS

Court experts who provide the court (and parties to the proceedings) with incorrect and inaccurate expert reports may be held directly and personally liable by the parties for any damages resulting from them (e.g. they lost the proceedings due to the inaccurate report).

Furthermore, under Austrian civil law, there is a higher standard of care for those who publicly claim a profession and demonstrate the required diligence and knowledge in a particular field. If damages occur in the exercise of one’s profession, the damaging party is responsible for lack of due diligence and knowledge (see Section 1299 of the Austrian Civil Code). This also applies to court experts.

There can also be further differentiations within a specific profession. For example, a distinction needs to be drawn between the required diligence and knowledge of a “doctor-in-training” and those of a “qualified doctor”.

The Austrian Supreme Court dealt with this particular legal issue in a recent decision (10 Ob 50/15y; hereinafter referred to as “Proceeding II”) regarding an inaccurate report provided by a medical court expert in the course of a prior civil proceeding (hereinafter referred to as “Proceeding I”).

In the course of Proceeding I, the appointed court expert had to make a determination regarding lead poisoning. The diagnosis of lead poisoning relates to the fields of internal medicine, clinical environmental medicine and occupational medicine, whereas the court expert almost exclusively practiced in the field of internal medicine. However, there were different opinions between the respective medical fields regarding the scientific method to determine lead poisoning.

Based on the expert report (the expert affirmed lead poisoning), the court in Proceeding I intended to uphold the claim. However, the parties reached an out-of-court settlement before the judgement was entered.

In the course of Proceeding II, damage claims were raised against the court expert because he allegedly used an inaccurate scientific method. However, the Austrian Supreme Court came to the conclusion that the expert could not be held liable because:

• During the relevant period, the scientific method used was disputed differently in the respective medical fields; whereas experts of internal medicine and of clinical environmental medicine

HIGHLIGHTS FROM THE AUSTRIAN SUPREME COURT

TO EMBELLISH A BUS DRIVER’S UNIFORM WITH A PINK HAIR RIBBON DOES NOT NECESSARILY REFLECT NEGATIVELY ON THE BUS DRIVER’S PROFESSIONALISM OR HIS SERIOUSNESS.

Sometimes people like to add a unique touch to their style, especially when required to wear a uniform.

This may have been why a male bus driver working for an Austrian Public Transportation network decided to wear a pink hair ribbon to pull back his curly hair while on duty. However, his employer told him to take off the ribbon, indicating that this eye-catching accessory would compromise the uniform appearance of a public bus driver. The gentleman’s refusal to comply led to the termination of his contract. After a series of complaints, the Austrian Supreme Court did not agree with the reasoning of the Public Transportation Network. On the one hand, continuing the contract is reasonable for the employer and on the other hand, the economic interests of the employer in this case do not outweigh the personal rights of the employee (article 8 EMRK). Therefore, not complying with an unjustified instruction from his employer did not lead to the employee breaking contractual obligations. The dismissal was ruled unlawful (9 ObA 82/15x).  
Christina Barzal
considered the method as state-of-the-art and specialists of occupational medicine disagreed.

- The court expert only practiced as a medical doctor for internal medicine and he acted with the required knowledge of an average expert in this field.
- Although the determination of lead poisoning also relates to occupational medicine, the expert was not required to have the knowledge of an expert in that medical field.

Since he used a method which was considered state-of-the-art within the field of internal medicine, he could not be held liable for damages.

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**TAX LITIGATION**

**LANDMARK RULING OF THE ROMANIAN CONSTITUTIONAL COURT ON THE LIABILITY OF THE STATE**

The Romanian Constitutional Court has ruled that any taxpayer who has made an unlawful payment to the tax authorities has the right to charge interest from the date on which such payment was made and until the date of actual refund.

With its decision – published on 22 December 2015 in the Romanian Official Gazette, the Romanian Constitutional Court declared as unconstitutional the provisions of the article 124 par. (1) of the Fiscal Procedure Code providing the following: "For amounts to be reimbursed or refunded from the budget, taxpayers are entitled to interest starting with the following day of the deadline stipulated in article 117 (2) and (2') or article 70, as appropriate, until the date of settlement by any of the means provided by law."

The provisions of article 70 of the Romanian Fiscal Procedure Code to which the provisions of art. 124 par. (1) make reference to stipulate the following: "Requests by the taxpayer under this Code shall be settled by the tax authorities within 45 days of registration."

Before the issuance and application of this decision by the Romanian Constitutional Court, the taxpayers were allowed to request payment of delay interest only if the tax authorities were not settling the requests for restitution of amounts unduly paid (as acknowledged by a decision of the tax authorities or of a court) within 45 days. Thus, the tax authorities were bound to pay interest only starting with the 46th day, irrespective of the fact that the amounts in question have been unduly paid by taxpayers many years ago.

In practice, it takes more than one year for a final decision in a fiscal litigation case to be issued because such disputes involve complex arguments and the taking of evidence. Even if a temporary injunction procedure is available to the parties, clear evidence of the imminent and significant loss is required and this is usually very difficult to provide to the court. We have also noted that the Romanian courts of law are usually reluctant to issue such a temporary injunction and obstruct the collection of taxes throughout the proceedings.

The judges of the Romanian Constitutional Court found that "the provisions of art. 124 (1) relative to those of art. 70 of Government Ordinance no. 92/2003 regarding the Fiscal Procedure Code, although guarantee to provide interest for the failure to refund, does not cover the full damage to be incurred by the taxpayer for having voluntarily agreed to execute a tax obligation that he regarded as being unlawful, and this was subsequently acknowledged by decision of a court of law or by the tax authority itself. In this way, a diminishing of the taxpayer estate occurs, due to an action of the state, thus being affected the right to private property. It obviously appears that the interest should be calculated from the date of freezing the amounts for which the refund is requested. This way, a reasonable and fair treatment between the parties is ensured."

This is a very important change for the fiscal practice because the rule is from now on that in all cases in which the tax authorities collect undue amounts from the taxpayer, such authorities shall be obliged to pay...
interest from the date of collecting the amounts.

This decision, which withdraws a certain “privilege” from the Romanian tax authorities, has in effect created a more balanced fiscal relationship between the tax authorities and the taxpayers. Since the decision provides a more drastic sanction for tax authorities that issue unlawful tax decisions and collect undue taxes, it may prevent the practice on the part of authorities to collect amounts for the state budget at all costs in the future.

Moreover, the arguments put forth by the Romanian Constitutional Court regarding the right of the taxpayer to obtain full compensation for damage incurred due to the unlawful actions of the tax authorities will be also applicable as a rule for the application of the new fiscal Romanian legislation.

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