

wts klient newsletter

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The Bridge.

Dear Readers,

As tax experts and finance professionals we really like leafing through any publication that gives us information about tax news, even news affecting more than one country. With this in mind we recommend to you the latest edition of the WTS VAT Newsletter.

This publication covers the latest VAT changes in 13 countries, and looks briefly at interesting individual topics. For Hungary we have an article that looks behind the scenes a little at the enduring topic of the EKAER.

Various other topics are broached in the WTS VAT Newsletter too; the current edition can be found [here](#). For example, you can read about the "split payment mechanism" in Romania: from now on, invoice totals need to be paid to two bank accounts in Romania, settling the VAT sum separately.

I hope you enjoy reading the Newsletter articles, and I wish you continued strength to get you through to the end of the year:

Béla Kovács
senior manager

Taxation of transformations, and preferential transformations

When transforming a company, taxpayers may opt for the preferential transformations route, which can have a significant impact on tax payment liabilities. » [page 1](#)

Granting holiday entitlements beyond the current year

According to the Labour Code, granting holiday entitlements must take place in the year when due, but deviating from the general rule is allowed in some accurately described cases. » [page 4](#)

Taxation of transformations, and preferential transformations

- conditions under Corporate Tax Act for preferential transformations
- exemption from duties
- use of loss carry-forwards
- role of the NAV during transformations

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In our article entitled [Challenges during transformation of companies](#) we provided a general overview of transformations, in the subsequent summary [The transformation process of companies](#) we generally dealt with legal regulations, deadlines and related schedules, while our

article on [Accounting tasks during the transformation of companies](#) detailed the related accounting measures. The transformation of companies raises many different taxation issues too. We will now explore these in the article below.

There are countless factors and economic necessities that can trigger the transformation of companies; one thing is certain though: **the taxation aspect is always worth examining** before making any decision on transforming.

Which tax types require attention during a transformation?

Corporate tax and property acquisition duty are the two main focal points in relation to transformations. The taxation benefits can be simplified in as much as most of them in this context are related to preferential transformations. Implementing preferential transformations is subject to numerous conditions.

What are preferential transformations?

According to the rules of Act LXXXI of 1996 on Corporate and Dividend Tax (hereinafter referred to as: Corporate Tax Act), **preferential transformations** are transformations (including mergers and demergers), in which both the predecessor and the successor **are companies**, if

- during the transaction the members or shareholders of the predecessor company receive a share in the successor company as well as a cash payment not exceeding 10 percent of the

aggregate nominal value of the acquired share in connection with the transformation (for lack of a nominal value, the percentage represented in the registered capital), and

- in the case of a demerger, the members or shareholders of the predecessor company acquire shares in the legal successor that are proportionate relative to one another,
- merging with the sole proprietor or shareholder of a single-person company.

From 2017 the law has tightened the rules in this respect. A transformation can only be considered preferential if it is based on **genuine economic or commercial reasons**, and the taxpayer has to verify this.

The special rules under the Corporate Tax Act for adjusting tax bases define further conditions for taking advantage of this opportunity. Accordingly, preferential transformations are also subject to the legal successor's **articles of association containing** a commitment to determine its tax base following the transformation as if the transformation had not taken place, and to keep the revalued assets and liabilities separate; furthermore, the legal predecessor (or in the event of a demerger, the legal successor) must **notify the tax authority** of the decision in its tax return on the fiscal year of the transformation.

What are the benefits of preferential transformations?

The Corporate Tax Act as well as the Act on Duties provide tax allowances if preferential transformations are chosen and the conditions are met.

One of the real advantages in terms of corporate tax is that any **revaluation differences** arising in the market valuation during the transformation **do not have to be taxed** at the legal predecessor in the tax return prepared as of the day of the transformation. This is in fact a **tax deferral** because the legal successor has to determine its tax base deductibles as if the transformation had not taken place.

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Successful legislative proposals

Taking R&D expenses into account within groups

In a study we made a proposal to the Ministry for National Economy regarding the introduction of taxpayer groups in relation to corporate tax. We highlighted the practice used in neighbouring Austria, and sent a WTS working paper to the Ministry for National Economy, in which we summarised "tax products" applied in the corporate tax systems of countries in the region that created a competitive advantage for the given countries.

We deemed it important to create an option for the full accounting of R&D expenses within a group until a comprehensive group taxation system is introduced. It is important to bear in mind that R&D functions are often assigned to a separate company within groups, while corporate structures mean that production or sales are concentrated at other Hungarian legal entities.

As a result of our intervention, Act LXXXI of 1996 on Corporate and Dividend Tax stipulates that it is possible for taxpayers to decrease their pre-tax profit with the amount determined based on the direct cost of research and development activity performed by a related company in its own sphere of activity.

The provision can be applied on condition that the research and development activity pursued by the related entity is related to the (income-generating) activity of both the taxpayer and its related entity. An additional requirement is that the taxpayer has a statement from the related entity on the amount of the direct costs of research and development performed within the scope of its own activity in the fiscal year, and the relevant amount to be claimed by the taxpayer.

Do you have also an opinion about taxation? Would you like the government to listen to your proposals on tax policy in Hungary? Then come to our Tax Strategy Day 2018 conference!

The highly qualified workforce creates a positive environment for research and development in Hungary. We are very glad that the favourable taxation rules applicable to R&D activity help maintain this environment.

Dr. Hans Maier, head of taxes and customs, Robert Bosch GmbH

Namely, the tax base deductible items are based on the figures prior to the market valuation, while the disallowed items are based on the revalued carrying amounts. Consequently, the corporate tax on the revaluation difference not paid at the time of the transformation is paid over the duration of the asset's useful life.

The other major benefit is that any property acquisition during preferential transformations is exempt from the duty on the onerous transfer of property. The taxpayer still enjoys **duty exemption** if the transformation meets the general conditions for preferential transformations but the special rules on tax base adjustments in the Corporate Tax Act are not complied with.

What happens with using any loss carry-forwards of the legal predecessor?

In the event of a transformation, the successor can use the loss carry-forwards accumulated at the predecessor in proportion to its share in the predecessor's assets as recognised in the transformation balance sheet.

Conditions for using loss carry-forwards received during a transformation:

- During a transformation, a majority influence is obtained in the successor company by an owner who (or whose related company) previously held such an influence in the predecessor before the transformation.
- In the two fiscal years after the transformation the successor generates income or sales revenue in at least one of the activities pursued by the predecessor company, except if it is terminated without succession within two fiscal years, or if the predecessor's activity related solely to asset management.
- Loss carry-forwards can only be used in each fiscal year at the successor up to the proportion of the fiscal-year revenue from the continued activity relative to the average revenue in the preceding three fiscal years.

What is the NAV's role during transformations?

Registering transformations at the court is subject to the tax authority (NAV) notifying the Court of Registration that there are **no pending tax authority procedures** against the company. If no information is forthcoming, the transformation can be registered on the 90th day from the submission of the transformation request and from the availability of all the company documents at the Court of Registration.

In light of the above, transforming companies is a very complex process and it is worthwhile considering the help of experts to plan and implement the steps carefully.



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"Tax conditions are moving in the right direction overall following amendments in recent years, but there are a few proposals that could make the tax system even fairer."

Zoltán Lambert, WTS Klient Hungary managing partner

Source: inforadio.hu



Turn on your radio!



The "Tax Strategy Day" conference is to be held on 28 November at the Aquincum Hotel in Budapest, with the professional support of WTS Klient. At the conference, representatives from the government, the business community and professional consultants will together be debating which tax policy strategies have underlain tax laws in the last few years, and what changes would be required going forward. Zoltán Lambert, managing partner at WTS Klient Hungary, will be talking about the planned programme on the evening of 9 November on InfoRadio.

[Listen to the conversation at this link!](#)

Please note that the conversation is available only in Hungarian.

Granting holiday entitlements beyond the current year



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As the end of the year draws near, a very important issue arises at employers: when can holidays not taken in the current year be brought forward to the following year? Holidays due to employees comprise two parts: basic leave and supplementary leave. **Basic leave** is 20 working days, while **supplementary leave** may be up to 10 working days a year depending on the employee's age.

As a general rule, the Labour Code sets forth that **holidays should be issued in the year when they are due**. An important rule in terms of granting holiday entitlements is that the employee has to be informed of the dates no later than 15 days prior to the start of the holiday. For lack of an alternative agreement, granting holiday entitlements should relieve employees from their work and obligation to be available for **at least 14 consecutive days** on one occasion every calendar year.

Granting holiday entitlements after the current year

Employers may deviate from granting holiday entitlements in the current year in the following cases:

- If the employment started on 1 October or afterwards, the employer can grant holiday entitlements until 31 March of the year following the due dates.
- If granting holiday entitlements comes up against a problem for reasons attributable to the employee, then the employer must start granting the holiday within 60 days of the problem being eliminated. Granting holiday entitlements is not permitted if the employee is exempt from work for any reason. Such reasons include, for example, a lengthy incapacity to work owing to illness, unpaid leave (during which the employee receives child care allowance (GYED) for instance) or any other unavoidable hindrance affecting the employee.
- The employer can grant 5 days of the current-year holiday entitlement in the following year. Holiday entitlements should be considered granted in the year when due if use of the holiday starts in the year when due, and the portion granted in the following year does not exceed 5 working days without interruption.
- Supplementary leave based on age can be granted by the employer until the end of the year following the year when due if the two parties agree in writing.
- No more than one quarter of the holiday entitlement can be granted by 31 March of the year following the year when due if permitted by the collective agreement due to an exceptionally important economic interest of the employer or for reasons affecting operations directly and significantly. These reasons include accidents, natural disasters or serious damage, as well as the prevention or elimination of threats to life, health or bodily injury. An exceptionally important economic reason for example is if the company would not be able to remain solvent if the holiday entitlement is granted, or if it would have to terminate the employee's employment to maintain its solvency.

What counts as a violation and what are the consequences?

The employer cannot refer to its own work organisation when failing to grant holiday entitlements. Granting holiday entitlements after the current year violates the law if this does not take place for the aforementioned reasons. As a general rule, holidays cannot be **compensated financially except when the employee's employment is terminated**. In this case, outstanding holidays must be compensated for in cash on a pro rata basis.

It is important for employers to be aware of these rules because the labour authorities check compliance with holiday entitlement provisions and the granting of holidays very strictly. The most serious violations of law in respect of granting holiday entitlements may lead to an **employment fine** which, as a general rule, can range from HUF 30,000 (approx. EUR 100) to HUF 10 million (approx. EUR 32,200).

This WTS information does not constitute advice and it serves only to provide general information about selected topics.

Any information contained herein shall thus not be considered exhaustive, and nor may it be relied upon instead of advisory services in individual cases. We accept no liability for the accuracy of the content.

Should you have any questions regarding the above or any other professional issues, please do not hesitate to get in touch with your WTS advisor or use any of the contact details below.

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