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## Key elements to autumn tax changes

## Corporate taxpayer groups soon to be available in Hungary too

On 19 October 2018 we learned about Bill T/2931 submitted to Parliament on the amendment of certain tax laws in relation to EU obligations and on the tax administration amendment of certain laws. The main modifications of the autumn tax changes relate to corporate tax, and here we would highlight the milestone introduction of taxpayer groups. We will be able to provide detailed information on the related advantages and how to use them following the final vote in Parliament. But let's take a look at the most important changes.

## AMENDMENT OF LAWS AFFECTING INCOME TAXATION

## Corporate tax

The most important of the autumn tax changes is the amendment to the Act on Corporate Tax which ensures harmonisation with EU legislation and introduces a related legal harmonisation provision. As part of transposing Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market – and in line with EU requirements – the provisions on controlled foreign companies are amended or supplemented, rules limiting interest deductions will be introduced and the principle of the proper exercise of law is to be supplemented. Further amendments deal with the introduction of corporate tax group registration, which is likely to make a significant improvement to competitiveness, with the eligibility for funding of the operating costs of sports facilities from the 2019/2020 funding period, the technical details of the aggregation rule for sports funding and with the removal of the housing allowance to facilitate mobility.

- The **claiming of tax benefits**, which is consistent with the subject or purpose of the legislation ensuring tax benefits, may not be limited if genuine economic and commercial reasons can be attributed to the legal transaction. This provision enters into force from 1 January 2019.
- According to the Bill at least two business entities qualifying as resident taxpayers, business organisations, associations, European public limited companies, cooperatives, European cooperatives, sole proprietorships, foreign individuals qualifying as resident taxpayers owing to their place of business management, and foreign enterprises by virtue of a Hungarian permanent establishment are entitled to form a corporate tax group. One of the main requirements for establishing a corporate tax group is there being a related company relationship between the taxpayers based on at least 75% of the voting rights. **Corporate tax groups** fulfil their tax liabilities

through a designated member of the group registered at the Hungarian tax and customs authority as the group representative, under a specific group ID, and the group exercises taxpayer rights in the same way. Under the Bill a corporate tax group is considered a single taxpayer from the perspective of claiming tax allowances. A group member may only claim a tax allowance pertaining to a period prior to its group membership if it complies with the allowance conditions after joining the group as well. As a general rule, for any transaction carried out between group members after the establishment of the corporate tax group, the provisions applied for transactions between related companies shall not be applied. However, for transactions realised before the formation of the corporate tax group, where the tax base has not yet been adjusted to a normal business level, the tax base must be adjusted. With regard to transactions carried out between the group members after the establishment of the corporate tax group, the obligation to keep documentation as per the Act on Corporate Tax shall be met at the level of the corporate tax group. Requests for corporate tax group registration may first be submitted between 1 and 15 January 2019. The deadline signals the end of the limitation period. If the Hungarian tax and customs authority approves the request, the corporate tax group status will be established as of 1 January 2019.

- Exemption from **controlled foreign company** status only applies to investor activity that qualifies as a service activity, i.e. active service activity. Holding shares per se does not exempt a foreign company from the status of a controlled foreign company. According to the Bill, the corporate tax base is increased with the portion of financial year income (tax base) that is derived from the sale of goods and services to related companies or the purchase of same from related companies, if the person acquiring such income generates little or no added value, provided that such portion is positive and exceeds one-third of the entire income of the controlled foreign company.

→ In line with Council Directive 2016/1164, the Bill introduces a new **interest limitation** rule, which is designed to prevent tax evasion and tax-base shifting, and will replace the provisions on thin capitalisation from 1 January 2019. Under the rule, the tax base is increased by the portion of net financing costs that exceeds 30% of fiscal-year earnings before interest, taxes, depreciation and amortisation (EBITDA) or HUF 939,810,000 (EUR 3 million). At the same time, the portion exceeding 30% of fiscal-year earnings before interest, taxes, depreciation and amortisation (EBITDA) or HUF 939,810,000 (EUR 3 million), i.e. the amount of the tax-base increase, is reduced, up to no more than the amount of the increase, by any unused interest deduction that accrued in previous fiscal years. For relevant contracts concluded prior to 17 June 2016, the new interest limitation rule must be applied for the first time from the day after the amounts of such contracts are raised or the contract term is extended, and in relation to the modified amount or term. Prior to any credit amount increase or term extension entering into force for financing contracts concluded prior to 17 June 2016, the previous thin capitalisation rule must be applied for the contracts concerned, but the taxpayer may choose to apply the interest limitation rule as well.

#### Act on Personal Income Tax

- The premium on (individual or group) **risk insurance** concluded by payers (employers) after 31 December 2018 is taxable (with due consideration of the one-year transitional provision applicable for risk insurance taken out before 1 January 2019). The Bill clarifies the transitional provision accepted in connection with the 2019 changes to insurance rules adopted in the [summer package of tax law amendments](#). Accordingly, for risk insurance, the provisions of the Act on Personal Income Tax for and in relation to risk insurance being in effect as of 31 December 2018 must be applied for insurance years starting in 2018 (and extending into 2019), which means not only paragraph 6.3 of Schedule 1, but also, for instance, the definition of risk insurance and the provisions of Section 9 (3b) of the Act on Personal Income Tax.
- The Bill also clarifies the transitional provision recorded in relation to the termination as of 1 January 2019 of the non-repayable employer **housing-support tax exemption**, making it clear that the rules in effect as of 31 December 2018 may only be applied in connection with accounting, using and verifying support received prior to 1 January 2019.

#### AMENDMENT OF LAWS AFFECTING INDIRECT TAXATION

##### Act on Value Added Tax

→ Act XLI of 2018 on the Amendment of Certain Tax Laws and Other Related Laws as well as on the Special Immigration Tax transposed into the VAT Act the provisions of Council Directive (EU) 2016/1065 on the **VAT treatment of vouchers**. The directive does not provide for the treatment of single-purpose vouchers acquired for consideration, but handed on free of charge. This is why the Bill supplements the existing provisions

by stating that the free transfer of single-purpose vouchers also creates a tax payment liability if the taxpayer was entitled to deduct tax, in whole or in part, when the voucher was acquired.

- For cases where leased passenger cars are used for both business and private purposes, the Bill dictates a 50% deduction rate for the input VAT on the lease, in order to reduce administration burdens. According to the Bill, if a taxpayer does not want to apply the 50% deduction rate dictated for the **mixed use of rented passenger cars**, the deduction rate can be altered based on duly substantiated documentation, in line with the extent the car is used or utilised for the business activity eligible for the tax deduction.
- In connection with the removal of **temporary labour** from the reverse charge mechanism from 1 January 2021, the Bill prescribes that the reverse charge can still be applied for temporary construction labour in the case of all construction/assembly work (not just that subject to a construction permit).
- The Bill raises the threshold for choosing **VAT-exempt taxpayer status** from HUF 8 million (roughly EUR 25,000) to HUF 12 million (roughly EUR 37,500).
- The provisions in force as of 31 December 2019 must also be applied for the amount of VAT on a residential property sale if the date determined in accordance with Section 84 is after 31 December 2019, provided that all of the following conditions apply collectively on 31 December 2019:
- a) the documents required to register an ownership right in the real estate register (especially the sale/purchase agreement) have been submitted to the real estate authority,
  - b) at least the shell of the given residential property is complete, and
  - c) the seller of the property has notified the state tax authority of the fulfilment of condition b) using the relevant form.

For the purposes of point b), the shell of a residential property shall be considered complete if its external boundary structures (walls, ceiling and roof structure, doors and windows, and, depending on the building plans, chimney, balcony, exterior stairs) have been completed.

#### AMENDMENTS TO LOCAL TAXES, DUTIES

##### Local tax

Under the current rules, **when transferring a business division** companies adopting IFRS (International Financial Reporting Standards) must increase their net sales revenue, and thus their local business tax base, with the consideration received for the business division in excess of the market value of the transferred assets – minus the value of the transferred liabilities – because this also qualifies as sales revenue under Hungarian accounting rules. Given that the Bill modifies the Act on Accounting so that this amount does not constitute part of sales revenue even for

those subject to the Act on Accounting, there is no need for the given provision increasing revenue in the local tax law either, so it is repealed by the Bill.

### Duties on financial transactions

The direct retail trade of government securities by the Treasury, as well as transfers in both directions for this purpose, are exempt from the financial transactions tax. This means transactions by the Treasury for government securities trading are exempt in the same way as government security trading by investment firms on the private market.

## TAX CONSULTING

If you would like more detailed information on any part of the autumn tax changes, or if you would like to know how this will affect your company, please get in touch with the [tax experts](#) at WTS Klient Hungary.

Tamás Gyányi  
partner  
Tel: +3618873736  
[tamas.gyanyi@wtsklient.hu](mailto:tamas.gyanyi@wtsklient.hu)

### AMENDMENTS AFFECTING PAYMENTS MADE TO SOCIAL SECURITY FUNDS

#### Act on the Eligibility for Social Security Benefits and Private Pensions and the Funding for These Services

- The rules on **income subject to contribution payments** are to be supplemented: income subject to contribution payments shall include income paid (allocated) based on an insurance relationship as per Section 5 of the Social Security Act, regardless of the time of the payment (allocation).
- The **incomes not subject to contribution payments** have been clarified with a rule defined in the implementing regulation: income does not have to be considered as income subject to contribution payments that is paid (allocated) for a period where no insurance relationship under Sections 11, 11/A, 11/B or 13 of the Social Security Act prevailed, regardless of the time of payment (allocation).

#### Social contribution tax

- The modifying provision defines the **person obliged to pay the tax**, in accordance with which the tax liability for income from a foreign payer that is not subject to contribution payments under the Social Security Act must be discharged by the natural person.

- One clarification specifies that, in case of an underlying agreement between the parties, the **tax payment liability for a natural person** shall be settled by the employer.
- The amendment introduces a **new type of R+D activity** allowance: a company – qualifying as a centre of basic and applied research as well as research and development, performed as its own business activity – employing R+D staff giving rise to a tax payment liability may claim a payer's tax allowance. The allowance equals 50% of the tax on the wage cost accounted in the given month as a direct cost of the research and development activity.

### AMENDMENT OF LAWS AFFECTING RULES OF PROCEDURE

- The maximum **default penalty** payable upon the violation of the rules for tax advance top-up liability decreases from 20% to 10% of the difference between the advance paid and 90% of the tax payable for the fiscal year.
- To reduce administration, the **data reporting obligation of employers/payers** with regard to information on their insured employees' education, professional qualifications and vocational training, the name of the institution issuing the documents certifying these qualifications and the number of the documents is to be discontinued.
- If personnel of a foreign tax authority are involved in a tax inspection, any related **interpretation and translation services** must be provided by the state tax and customs authority.
- The Bill extends the scope of **obligatory elements** of decisions based on practical experience, which means that in the future, decisions shall include the evidence provided by tax-payers but ignored, and the expiry of the administration deadline.

- According to the amendments, if a company generates a defined amount of sales revenue, but a **zero profit or even a loss**, the business entity shall obligatorily be subject to authority inspection following the acceptance of the financial statements for the second financial year, because there is a risk that a business entity producing zero profit or making a loss is deliberately trying to avoid fulfilling its tax payment liabilities. It is typical for start-up companies to carry out costly, one-off investments in the early years of their operation which are not covered by their revenue, so any business entity launched without a legal predecessor is exempt from this new obligatory inspection in the first 4 financial years of their operation.

### AMENDMENT OF OTHER LAWS

#### Act on Accounting – transfer of business division

In connection with the transfer of business divisions the Act on Accounting defines **goodwill or negative goodwill**, but does not contain any provision defining business division. Given that there is a significant difference in the financial content of a sale

of individual assets, the assumption of liabilities and the transfer of business divisions, defining a business division and the accounting rules for transferring business divisions in the Act on Accounting is justified. The proposed new accounting rules for business division transfers take the IFRS into account.

In practice the transfer of a business division is considered one single transaction both from a business and a financial point of view, so the contracting parties interpret it as one single transaction. Consequently it is recommended to handle such transfers as one transaction from an accounting perspective too. Since business division transfers are ad-hoc transactions, they are not considered part of regular operations (business activity); so it is justified to account for the difference between the value of assets transferred and liabilities assumed during the business division transfer (including provisions, accruals and deferrals) and the received and paid consideration on a net basis under other income or other expenses, depending on the result of the sale. Pursuant to the provisions of the current Act on Accounting the consideration for the transfer of the business division must be broken down according to the individual assets and liabilities forming part of the business division, and the consideration of the otherwise single transaction must be accounted for on an itemised basis, which means a considerable amount of administration for the entity transferring the business division. Under the Bill the **consolidated accounting** approach will reduce the administrative burden.

### Act on Customs

The act allows for the release of customs collateral after one year as opposed to the current three years.

### Employee Stock Ownership Programme

The Bill clarifies that not only ordinary shares but also any other shares embodying an investment risk similar to ordinary shares and other securities can form part of ESOP remuneration (directly or indirectly).

You can listen to the radio interview about this topic by clicking here:



[wtsklient.hu/2018/10/30/csoportos-adoalanyisag/](https://wtsklient.hu/2018/10/30/csoportos-adoalanyisag/)

(Please note that the conversation is available only in Hungarian.)

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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.

#### **WTS Klient Hungary**

1143 Budapest • Stefánia út 101-103. • Hungary  
Telephone: +36 1 887 3700 • Fax: +36 1 887 3799  
info@wtsklient.hu • www.wtsklient.hu

#### **WTS Klient Ltd.**

H-1143 Budapest, Stefánia út 101-103.  
Registration number: 01-09-930353

#### **WTS Klient Tax Advisory Ltd.**

H-1143 Budapest, Stefánia út 101-103.  
Registration number: 01-09-978231

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