TAX MANAGEMENT
PORTFOLIOS™

FOREIGN INCOME

Business Operations in Hungary

by

Dr. Nóra Kovács
Law Offices of Dr. Nóra Kovács
Budapest, Hungary

Dr. Nóra Kovács is a graduate of the Faculty of Law of the Eötvös Loránd University in Budapest. She is the managing partner of the Law Offices of Dr. Nóra Kovács, focusing on advising multinational companies in all legal aspects of their business operations in Hungary. She is a member of the Budapest Bar Association.

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TAX MANAGEMENT
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Business Operations in Hungary

PORTFOLIO DESCRIPTION

Tax Management Portfolio, *Business Operations in Hungary*, No. 7155-2nd, provides a detailed overview of the laws relating to the establishment and operation of businesses in Hungary as well as the taxation of both corporations and individuals in Hungary. This Portfolio can help foreign investors in determining the best form of conducting business in Hungary from both the tax and legal perspectives.

In addition to discussing the various legal forms of businesses, the Portfolio discusses the major aspects of taxation, including corporate income tax, personal income tax, and the value added tax.

While this Portfolio can provide a foreign investor with a preliminary understanding of the Hungarian legal and tax system, it is always essential to seek professional advice before making a decision on an investment or entering into a business deal in Hungary.

This Portfolio may be cited as Kovács, 7155-2nd T.M., *Business Operations in Hungary.*

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DETAILED ANALYSIS

I. Introduction

A. The Country, Its Political Organization and Judicial System

1. The Country

Hungary lies at the heart of Central Europe and is bordered by Slovakia to the north, by the Ukraine and Romania to the east, by Serbia and Croatia to the south, and by Slovenia and Austria to the west.

The Democratic Republic of Hungary was proclaimed on October 23, 1989 (from the end of World War II until this time, Hungary was a communist state). Hungary was admitted into NATO in 1999 and the European Union in 2004.

2. Political Organization

Since the 1990 regime change, Hungary's political system has been a parliamentary democracy. The members of Parliament are elected directly by the people every four years. The government is formed by the party or coalition of parties that wins the majority of the seats in Parliament. The government is led by the Prime Minister.

The President of the Republic is also elected by Parliament for a period of five years. The President's duties are primarily diplomatic and symbolic; actual power lies with the Prime Minister.

3. Judicial System

The judicial branch consists of four levels: district, county (metropolitan), regional, and national. Judges are appointed by the President, usually for life. Apart from the general judicial branch, Hungary's constitution provides for a Constitutional Court, whose role is to oversee the compatibility of Hungary's legislation with the Constitution and the international treaties to which the country is a party.

4. Arbitration System

Apart from the regular courts, businesses can choose to refer their legal disputes to courts of arbitration. Arbitration can be *ad hoc* (rarely used) or institutional/permanent. Permanent courts of arbitration are organized by the Hungarian Chamber of Commerce and Industry, the Hungarian Chamber of Agriculture (for agricultural matters), by the National Olympics Committee (for sports) and by the Regulated Activities Supervisory Authority (for concession related issues). Despite its obvious advantages (swifter, confidentiality is guaranteed, more flexible), the number of cases referred to arbitration falls way behind the caseload of the regular courts, though the number of arbitration cases is trending upward in recent years.

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II. Operating a Business in Hungary

A. Foreign Investment Regulation

1. Opportunities

Hungary welcomes foreign investment and treats it on equal terms with local investment. Since the regime change in 1990, foreign direct investment (FDI) has played a significant role in the successful restructuring of the Hungarian economy. Recently, as a result of Hungary's "Eastern Opening" policy, the volume of Asian FDIs has become more and more substantial accounting for almost 50% of the total FDI inflow into Hungary. There has been a notable shift away from low added value industries to the production of luxury and electronic vehicles, renewable energy systems, film industry, and information technology.[1] The Hungarian Investment Promotion Agency (HIPA) was established in 2014 to facilitate the inflow of foreign capital.

Hungary's geographic location as a bridge between Eastern and Western Europe, and the Hungarian tax system remain major features of the country's appeal to foreign investors.

2. Incentives

The Hungarian Investment Promotion Agency (HIPA) is the special agency, established in 2014, that has the goal of attracting foreign investors to Hungary and safeguarding their investments in Hungary.

In addition to the task of locating new investors, HIPA also has an after-care program, set up to maintain investor confidence, that encourages the subsidiaries of multinational companies established in Hungary to make additional investments.

The Hungarian Government is strongly committed to streamlining business processes and increasing the competitiveness of both small and medium-sized enterprises (SMEs) and large enterprises through a wide range of available incentives, believing this will help Hungary retain and even strengthen its position as an attractive destination for foreign investment.

Both refundable and nonrefundable incentives are available for investors moving to or expanding in Hungary. The main types of incentives with respect to investment are as follows: (i) cash subsidies (from either the Hungarian Government or EU funds); (ii) tax incentives; and (iii) low interest loans.

a. Cash Subsidies

The maximum available amounts of regional incentives are based on a regional level aid map that is aligned with the European Union's program period for 2021–2027. As a result of the current centralization of the Hungarian economy, the rural and less-developed parts of Hungary have been enjoying preferential treatment in the allocation of regional incentives. Based on the regional intensity map adopted by the Commission on April 19, 2021, effective as of January 1, 2022, there is a significant favorable change for Pest County (for the current and the new regional aid level maps for large enterprises, see Worksheet 2) with the county having been recognized as a separate region from the capital. Small and medium-sized enterprise (SMEs) and research and development (R&D) projects may be able to benefit from even more favorable conditions.

The subsidies that may be granted by the Hungarian Government and financed by the state ("VIP subsidies") are discussed in (1) to (7), below.

(1) Direct Investments

The process for applying for a direct VIP subsidy is regulated by Government Decree No. 210/2014 (VIII.27). The decree defines those investments that are not eligible for the government subsidy. These include investments in, among other things, the steel industry, commercial activity, R&D infrastructure, tourism and transportation.[2] All investments not listed among the exceptions may qualify for a government subsidy, but some (such as investments in the biotech, electronic, machinery, pharmaceutical, IT and telecommunications, automotive, and food industries as well as in the establishment of shared service centers) are a top priority.[3]

Investment subsidies may be used for the following objectives:

(i) For an initial investment (regardless of the size of the investor), if the amount of eligible costs of the investment project is up to three million euros. The threshold is five million euros in the cities of: Salgótarján, Miskolc, Nyíregyháza. Békéscsaba, Pécs, Kaposvár, Szolnok or in any district capital, and 10 million euros in the cities of Győr, Székesfehérvár, Tatabánya, Szekszár, Kecskemét, Szombathely, Veszprém, Zalaegerszeg, Debrecen, Szeged, Eger, provided, that if the district capital is identical with the county capital, then the higher amount is to be considered; and

(ii) For an initial investment (regardless of the size of the investor or the amount of eligible costs) where the number of new jobs created by the investment project is at least 25, provided the objective is to set up a regional service center or to expand an existing one.[4]

The maximum aid intensity percentage is as follows:

(i) In the counties of Hajdú-Bihar, Jász-Nagykun-Szolnok, Szabolcs-Szatmár-Bereg, Borsod-Abaúj-Zemplén, Heves, Nógrád, Bács-Kiskun, Békés, Csongrád, Baranya, Somogy, Tolna, and Pest: 50%; and

(ii) In the counties of Komárom-Esztergom, Veszprém, Fejér, Győr-Moson-Sopron, Vas, and Zala: 30%.[5]

The maximum aid intensity is higher by 20% for small enterprises and by 10% for medium enterprises, while large enterprises may benefit from these percentages only with respect to projects with eligible costs of up to 50 million euros. Where the eligible costs are between 50 million and 100 million euros, 50% of the above-specified aid intensity will apply, and where

[1] https://hipa.hu/despite-the-coronavirus-pandemic-2020-was-a-year-of-successful-foreign-direct-investments-.

[2] Government Decree No. 210/2014 (VIII.27.), Sec. 8(1).

[3] Government Decree No. 210/2014 (VIII.27.), Sec. 7.

[4] Government Decree No. 210/2014 (VIII.27.), Sec. 9(1).

[5] Government Decree No. 37/2011 (III.22.), Sec. 25(1).

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the eligible costs are higher than 100 million euros, 34% of the above-specified aid intensity will apply, subject to the approval of the European Commission.[6]

The condition precedent for granting the investment subsidies for start-ups is that the investor guarantees that the annual wage bill of the investor on average for the mandatory period of use shall reach the amount of the annual wage bill achieved in the financial year prior to the start of works — or if the investor made a commitment for a higher amount in another aid agreement, relative to that corresponding amount — plus 300,000 euros, and the amount of the investor's net turnover shall reach the amount of the annual wage bill achieved in the financial year prior to the start of works — or if the investor made a commitment for a higher amount in another aid agreement, relative to that amount — plus three million euros.

If the investment is not made by a start-up, the investor has to guarantee one of the following, selected at the discretion of the investor):

(i) The annual wage bill of the investor on average for the mandatory period of use shall reach the annual amount achieved in the financial year prior to the start of works increased by at least 30 % — or if the investor made a commitment for a higher amount in another aid agreement, relative to that corresponding amount — plus at least 30%, and the amount of the investor's net turnover shall reach on average the annual amount achieved in the financial year prior to the start of works, or if the investor made a commitment for a higher amount in another aid agreement, that amount; or

(ii) The investor's annual net turnover on average for the mandatory period of use shall reach the annual amount achieved in the financial year prior to the start of works increased by at least 30% — or if the investor made a commitment for a higher amount in another aid agreement, relative to that amount — plus at least 30%, and the amount of the investor's wage bill shall reach on average the annual amount achieved in the financial year prior to the start of works, or if the investor made a commitment for a higher amount in another aid agreement, that amount, or

(iii) The increase in the investor's annual wage bill on average for the mandatory period of use relative to the annual amount achieved in the financial year prior to the start of works expressed in a percentage — or if the investor made a commitment for a higher amount in another aid agreement, the increase relative to that amount — expressed in a percentage, and the increase in the amount of the investor's net turnover relative to the annual amount achieved in the financial year prior to the start of works expressed in a percentage — or if the investor made a commitment for a higher amount in another aid agreement, that amount — expressed in a percentage collectively reach 30 percentage points.

The investor is required to maintain the investment in the area concerned under the conditions set out in the aid agreement, at least during the mandatory operating period.

It is also a requirement that the investor provide at least 25% of the eligible costs from its own resources and demonstrates to the grantor the origin of the funds.

The investor is also obliged to maintain the average number of jobs retained over the years for the total mandatory operating period (if there is a difference between the number of jobs to be retained in the different years of the mandatory operating period, the number is to be determined in the aid agreement). If the investment concerns the development or expansion of a regional service center, then in addition to the number of jobs maintained in each year of the mandatory operating period, the minimum number of new jobs to be created is 50.[7]

If the investment is an initial investment entailing the extension of the product range of an existing establishment by a product not previously manufactured in the establishment, the subsidy shall be granted on condition that the eligible costs must exceed by at least 200% the book value of the assets that are reused, as registered in the tax year preceding the start of works.[8]

In certain cases, the prior consent of the European Commission is required, i.e., when:

(i) Eligible costs reach 110 million euros or, in the case of R&D investments, within values as defined in Section (1) of Article 4 of Commission Regulation (EU) No. 651/2014 of June 17, 2014, declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty; or

(ii) The investor terminated the same or similar business activities in the European Economic Area (EEA) in the past two years or contemplates doing so within two years following the completion of the subsidized project.[9]

(2) Employee Training

Training subsidies are regulated by Government Decree No. 210/2014 (VIII.27.). The maximum amount of the training subsidy is 5,000 euros per person, provided, however that the total training subsidy does not exceed: three million euros.[10] The maximum aid level is 50% of the total eligible costs.

The special eligibility requirements in connection with this subsidy specify that (i) the duration of the training project may not exceed 24 months; (ii) the beneficiary of the subsidy either establishes a regional service center, extends an existing one or carries out a plant upgrade with a minimum value of five million euros. The number of employees attending the subsidized training may not exceed the sum of the number of retained and newly created jobs. Furthermore, in case of plant upgrade, the applicant must undertake to maintain the number of retained positions for a period of at least 18 months following the training or if the plant upgrade is finalized later, then after the finishing of the plant upgrade.[11]

[6] Government Decree No. 210/2014 (VIII.27.), Sec. 12(1)–(2).

[7] Government Decree No. 210/2014 (VIII.27.), Sec. 14(1).
[8] Government Decree No. 210/2014 (VIII.27.), Sec. 14(2).
[9] Government Decree No. 210/2014 (VIII.27.), Sec. 16(1).
[10] Government Decree No. 210/2014 (VIII.27.), Sec 26/G(3).
[11] Government Decree No. 210/2014 (VIII.27.), Sec 26/I(3).

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(3) Research and Development

Subsidies for R&D under Government Decree No. 210/2014 (VIII.27.) are available for large or medium-sized enterprises (in this case, on condition, that the number of employees of the enterprise and its direct controlling shareholder is at least 100) for projects with eligible costs reaching one million euros where the number of newly created R&D jobs is at least 10, with the proviso that at least 50% of the newly created jobs require a university-level degree.[12]

The maximum aid intensity is 25% if the investment is carried out in Budapest and 40% outside Budapest.[13] If, at the time the aid application is submitted, the investor's R&D project includes both experimental development and applied research, the maximum aid intensity for the applied research part of the project is 50%.[14] The subsidy given to an investor for a single project may not exceed 25 million euros.[15]

(4) Renewable Energy Production and Storage, Renewable Hydrogen Production

This subsidy is available for investments in the production and storage of renewable energy or in the production of renewable hydrogen related to the activities listed in the decree.[16]

Investment aid for electricity storage projects, including thermal storage, may be granted if:

(i) The investment is for renewable energy production and storage, or

(ii) In the case of an existing renewable energy production facility, for storage only; and

(iii) At least 75% of the energy of the storage facility is obtained from the directly connected renewable energy production facility.

Investment aid for the production and storage of biofuels, bioliquids, biogas, including biomethane, and biomass may be granted if:

(i) The supported fuels comply with the sustainability and greenhouse gas emission saving criteria set out in Directive (EU) 2018/2001 and its implementing or delegated acts and are produced from feedstock listed in Annex IX to Directive (EU) 2018/2001; and

(ii) At least 75 % of the fuel content of the storage facility is obtained from a directly connected facility producing biofuel, bioliquids, biogas, including biomethane, and fuel from biomass.

Investment aid for the production of hydrogen may only be granted for renewable hydrogen production facilities, including renewable hydrogen transmission and distribution infrastructure and renewable hydrogen storage facilities.[17]

Maximum aid intensity is 45% (30% in Budapest) or 30% in the case of a subsidy to an existing renewable energy production facility for storage purposes only.[18] The subsidy given to an investor for a single project may not exceed 30 million euro.[19]

(5) Temporary Crisis Aid

According to the Communication from the European Commission (2022/C 131 I/01), temporary "limited amounts of aid" to undertakings affected by Russia's aggression against Ukraine and/or by the sanctions imposed or by the retaliatory counter measures taken in response can be an appropriate, necessary and targeted solution during the current crisis. The Communication has since been amended a few times, with the latest Communication being effective as of May 2, 2024. In response to this Communication, effective as of October 27, 2022, limited amounts of aid are also included in Government Decree No. 210/2014 (VIII.27).[20] The aid was available until June 30, 2024 (with the exception of aid granted to undertakings active in the primary production of agricultural products as well as undertakings active in the fishery and aquaculture sectors, which may be granted until December 31, 2024), for large enterprises with their registered office, branch or establishment in Hungary, which had at least one closed business year and were affected by Russian aggression against Ukraine, the sanctions imposed or the retaliatory countermeasures taken in response.

The conditions for the limited amounts of aid are set out in the Communication from the European Commission. In addition to those conditions, Hungary specified that the investment must relate to specific economic activities (same as for the incentives for energy efficiency and renewable energy production investments, discussed above). Under the Communication, the maximum amount of the aid is two million euros per undertaking, and the aid intensity is 45% (30% in Budapest).[21] The minimum amount of the investment to be carried out is 500,000 euros with an obligatory monitoring period of one year. In addition, the beneficiary was required to maintain at least 90% of their average headcount in 2022 after the completion of the investment.[22]

(6) Research and Technology Innovation Fund

Hungary has established a National Research Development and Innovation Fund. Subsidies from this fund are available through a tender application process under Act LXXVI of 2014.

The various subsidies are listed in Government Decree No. 380/2014 (XII.31) and include:

(i) A regional investment subsidy for companies of all sizes;

(ii) A subsidy for consultation for SMEs;

(iii) Risk financing subsidies;

(iv) R&D subsidies;

(v) Innovation subsidies for SMEs; and

(vi) Training subsidies.

[12] Government Decree No. 210/2014 (VIII.27.), Sec. 9(1a).
[13] Government Decree No. 210/2014 (VIII.27.), Sec. 13/A(1).
[14] Government Decree No. 210/2014 (VIII.27.), Sec. 13/A(2).
[15] Government Decree No. 210/2014 (VIII.27.), Sec. 13/B.
[16] Government Decree No. 210/2014 (VIII.27.), Ch. 4/C
[17] Government Decree No. 210/2014 (VIII.27.), Sec. 26/ZH(4)–(7).
[18] Government Decree No. 210/2014 (VIII.27.), Sec. 26/ZK(1).
[19] Government Decree No. 210/2014 (VIII.27.), Sec. 26/ZK(3).
[20] Government Decree No. 210/2014 (VIII.27.), Ch. 4/D.
[21] Government Decree No. 210/2014 (VIII.27.), Sec. 26/ZZ(1).
[22] Government Decree No. 210/2014 (VIII.27.), Sec. 26/ZZB(1).

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(7) EU Aid

A wide range of tender calls is available from EU funds. The conditions for the application, timing, and total amount of the subsidy available vary from tender to tender. These tenders reflect the priorities of the Hungarian Government.

Note: The procedural regulations on how EU funds can be applied under the current 2021–2027 program period, were published in May 2021. Hungary is eligible for 22 billion euros from the EU cohesion funds; however, on December 22, 2022, the European Commission decided to hold back the entire amount for Hungary until the government meets conditions related to judiciary independence, academic freedoms, LGBTQI rights, and the asylum system. The Commission defined 27 "super milestones" for Hungary to accomplish; negotiations about the release of these funds are on-going. As a result of such negotiations, in December 2023 the Commission agreed to release 10.2 billion euros from the EU cohesion funds, but it is not the end of the process and Hungary is still being monitored in terms of compliance with the rule-of-law related milestones.

b. Tax Incentives

(1) Development Projects

Development tax incentives are regulated by Act LXXXI of 1996 on corporate income tax and dividend tax (the "CIT Act"). Under the relevant provisions, tax credits are granted to taxpayers for the following:

(i) Investment projects with a value of HUF three billion or more;

(ii) Investment projects commenced and operated within the administrative jurisdiction of a favored municipal government with a value of HUF one billion or more;

(iii) Investment projects with a value of HUF 100 million or more concerned with bringing an existing food facility producing foodstuff of animal origin into compliance with the requirements laid down in the relevant legislation concerning food hygiene;

(iv) Independent environmental projects with a value of HUF 100 million or more;

(v) Investment projects concerning basic research, applied research and experimental development with a value of HUF 100 million or more;

(vi) Investment projects with a value of HUF 100 million or more exclusively for motion picture and video production;

(vii) Investment projects serving to create new jobs;

(viii) Investment projects with a value of HUF 100 million or more commenced after the first day of trading in shares issued to increase the taxpayer's subscribed capital (or a part of such shares) on a regulated market, but no later than the last day of the third year following the first day of trading;

(ix) Investment projects with a value of HUF 50 million or more implemented by small enterprises or with a value of HUF 100 million or more implemented by medium-sized enterprises;

(x) Investment projects with a value of HUF 100 million or more implemented in a free enterprise zone;[23]

Effective as of July 15, 2023, transitional tax credits can be granted to taxpayers for investment projects of strategic importance for the transition to a net zero emission economy.[24] In order to qualify for the temporary development tax credit, the taxpayer must submit an application to the finance minister before the investment begins. The amount of the temporary development tax relief together with the total amount of state aid received may not exceed 35% (15% in Budapest) of the eligible costs of the investment at present value and the amount of state aid claimed for the investment may not exceed 100% of the eligible costs.[25]

A temporary development tax credit may only be granted for an investment which, in the absence of the aid, would be carried out outside an EEA State.[26]

The tax credit will be granted if the investments are operated in accordance with the terms and conditions set out in Government Decree No. 165/2014 (VII.17).[27]

The tax credit may be claimed if the investment qualifies as an initial investment and is made by an SME or a large company in one of the following regions: Northern Hungary; Northern or Southern Plain; or Southern, Central or West Transdanubia or Pest.[28]

The taxpayer must determine the amount of the tax credit itself in accordance with the relevant laws.

Tax credits may only be granted pursuant to a Government resolution after the prior authorization of the European Commission has been obtained, where:

(i) All State aid requested for the investment project exceeds the sum that can be awarded in the same municipality to an investment with eligible costs exceeding the HUF equivalent of 110 million euros; or

(ii) All State aid requested for the investments of SMEs in Budapest exceeds the sum that can be awarded in the same municipality to an investment with eligible costs exceeding the HUF equivalent of 8.25 million euros for each investment project.[29]

In the above cases, the taxpayer is required to submit its applications for a tax credit to the minister in charge of taxation. Before the application is presented to the Government, the minister in charge of taxation must request authorization from the European Commission.

The taxpayer can take advantage of the tax relief for up to 12 years following the year in which the project was launched. The latest date for which relief may be granted is 16 years fol-

[23] Act LXXXI of 1996 on corporate income tax and dividend tax ("CIT Act"), Sec. 22/B(1).
[24] CIT Act, Sec. 22/B(1) and (20).
[25] CIT Act, Sec. 22/B(29).
[26] CIT Act, Sec. 22/B(31).
[27] CIT Act, Sec. 22/B, Subsec. (1).
[28] CIT Act, Sec. 22/B, Subsec. (1a).
[29] CIT Act, Sec. 22/B, Subsec. (2a).

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lowing the tax year in which the notification or application was submitted.[30]

For investment projects with a value of HUF three billion or more and for investment projects commenced and operated within the administrative jurisdiction of a favored municipal government with a value of HUF one billion or more, a further condition precedent is that, during the four tax years following the first year in which the tax allowance is claimed, the average statistical number of employees does not fall below the average statistical number of employees consistent with the mathematical average calculated based on the three tax years before the commencement of the project.[31]

Tax relief for investment projects that are the subject of an IPO within three years and have a value of HUF 100 million or more is granted subject to the following additional conditions:

(i) The nominal value of all securities admitted to a regulated market is maintained at all times to cover at least 50% of the taxpayer's subscribed capital from the day of admission to the regulated market until the last day of the fifth tax year following the starting date of the project, and the taxpayer does not change its form of business during that time;

(ii) Securities representing the subscribed capital of the taxpayer are admitted to a regulated market for the first time;

(iii) The combined par value of all shares issued by the taxpayer for purposes of increasing its subscribed capital and admitted to a regulated market reach at least 50% of the eligible costs indicated in the application for tax relief at current prices;

(iv) At the time of submission of the application or notification for tax relief, the following criteria are met: the taxpayer has at least 25 shareholders holding the shares admitted to a regulated market; or at least 25% of the shares admitted to a regulated market are held by shareholders none of whom holds over 5% of the nominal value of the shares admitted to the regulated market.[32]

In addition to the above, Government Decree 165/2014 contains additional requirements and may contain restrictions concerning eligibility for tax relief in certain cases.

In any given tax year, the development tax incentive is available for up to 80% of the corporate tax payable less the R&D tax incentive (see below) but may not exceed the applicable state aid level ceiling.[33]

(2) Research and Development

A CIT base allowance and a local business tax (LBT) base allowance apply with respect to R&D activities. The direct costs of an entity's own R&D and the value of purchased R&D services — if not incurred in connection with R&D services purchased from a Hungarian resident taxpayer, a private entrepreneur, or a Hungarian permanent establishment (PE) of a foreign company — are deductible from the tax base. As of 2014, a taxpayer may deduct the direct R&D costs of a related company from its pre-tax profit, to the extent the related company has not also utilized the deduction and certain other criteria are satisfied.[34] The taxpayer and the related company may agree on how to allocate the deduction between them. If the R&D activity is performed in partnership with colleges, universities, the Hungarian Academy of Sciences, or certain state or European Union-owned research institutions, the deduction can be triple the amount calculated under the above regulations, provided the deduction does not exceed HUF 50 million.[35]

Effective as of December 31, 2023, in lieu of the above tax relief, taxpayers can choose to claim the tax allowance described below for basic research, applied (industrial) research, and experimental development activities per R&D project in the tax year in which the eligible costs are incurred and in the following three tax years.[36]

The taxpayer claims this tax allowance in the order in which the eligible costs are incurred. The taxpayer may claim a tax allowance up to the amount of the tax calculated for the tax year. The amount of the tax allowance is 10% of the eligible costs, except in the case of basic research, applied research or experimental development jointly carried out by the taxpayer and either a higher education institution, the Hungarian Academy of Sciences or a governmental research institute, in which case the amount is HUF 500 million.

The amount of the tax allowance may not exceed, per taxpayer and per project, the following amounts:

(a) HUF 55 million, if the activity carried out by the taxpayer in the course of its own activities is considered to be basic research;

(b) HUF 35 million, if the taxpayer's own research activity is applied (industrial) research; or

(c) HUF 25 million, if the taxpayer's own business activity is experimental development.

(3) Cinematographic Works

A taxpayer that makes a contribution to a cinematographic production is entitled to claim the amount of the contribution as a deduction from its pre-tax profits as well as a tax credit against its CIT liability. The taxpayer must first obtain a sponsorship certificate from the competent government agency stipulating the qualifying costs and the maximum amount of the allowance. The allowance may be claimed against the tax due for the tax year during which the aid (support) was provided and over the following eight tax years, counting from the calendar year in which the aid (support) was provided.[37] The amount that can be credited by a sponsor may not exceed 70% of its CIT due for the year.

Effective January 1, 2014, in addition to the contribution paid to the film production, a taxpayer must pay "supplementary aid" as a requirement for qualifying for the tax allowance. The supplementary aid is payable to the National Film Institution. The supplementary aid does not decrease the taxpayer's

[30] CIT Act, Sec. 22/B(6).
[31] CIT Act, Sec. 22/B(9).
[32] CIT Act, Sec. 22/B(13).
[33] CIT Act, Sec. 23(2).
[34] CIT Act, Sec. 7(1), point w).
[35] CIT Act, Sec. 7(17).
[36] CIT Act, Sec. 22/G(1).
[37] CIT Act, Sec. 22(1).

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tax base and is not deductible from the tax payable. The supplementary aid is equal to 75% of the tax payable calculated on the value of the contribution to a film production.

Example: If a film production supporter subject to a CIT rate of 9% with a pre-tax profit of 4,000 makes a contribution of 100, the tax base will be 3,900 (4,000 – 100). Without the film contribution, the tax would be 4,000 × 0.09 = 360. The supplementary aid will be 6.75 (100 × 0.09 × 0.75). The CIT calculated for the modified tax base will be (3,900 × 0.09) = 351. The general limit up to which the tax credit can be used is 70% of the tax payable, i.e., 351 × 0.7 = 245.7. The total tax payable will be 351 – 100 = 251. If the contribution paid to the film production (100) is added to the supplementary aid (6.75), the total burden will be 357.75, which is lower than the tax without the contribution (360).

Effective January 1, 2015, taxpayers may also offer indirect aid for film productions in their monthly or quarterly advance CIT returns of up to 80% of their advance CIT.[38] If the taxpayer does not make such an offer or if the sum offered is less than 80% of the amount of tax the taxpayer is liable to pay, the taxpayer may donate the amount of CIT liability not yet donated. The donation made plus the total amount donated during the tax year may not, however, exceed 80% of the amount of tax payable.

The total of the certificates of entitlement and the indirect aid may not exceed 30% of the direct production costs as approved by the motion picture authority.[39]

(4) Small and Medium-Sized Companies

A taxpayer qualifying as an SME as of the last day of the tax year is eligible for tax allowances for the entire year on signing a qualifying loan or financial leasing contract regarding the purchase or creation — financed by a financial institution — of a tangible asset. The loan must be used exclusively for this purpose and the tax allowance is based on the interest on the loan (including a second loan obtained to refinance the first loan).[40]

The tax allowance is equal to the interest paid by the taxpayer in the course of the tax year.[41] This allowance is applied as a tax credit against the calculated tax due.

The taxpayer is eligible for the tax allowance in the tax year on the last day of which the tangible asset in question is shown in its records; the last year of eligibility is the year in which the loan is to be paid off in full under the contract.

(5) Sponsorship of Sports Teams

Within the framework of sponsorship of popular team sports, taxpayers may provide support (funding) under the following categories, subject to the terms and conditions set out in the CIT Act:

(i) National associations of certain popular team sports;

(ii) Amateur sports organizations holding memberships in national associations of certain popular team sports;

(iii) Professional sports organizations holding memberships in national associations of certain popular team sports;

(iv) Public foundations created for the promotion of certain popular team sports; and

(v) The Hungarian Olympic Committee.[42]

Such support may give rise to both a tax credit and a tax allowance. To claim the credit, the sponsoring taxpayer must obtain a sponsorship certificate made out in its name from the competent authorities indicating the amount being contributed. The contribution is credited against tax due for the tax year in which it is provided and may not exceed the amount indicated in the sponsorship certificate. It may be carried forward for eight calendar years from the year in which it is provided. In addition, by way of exception to the general rule, the amount indicated in the sponsorship certificate will not be added to the taxpayer's pre-tax profit in determining its tax base.[43] To become eligible for this tax allowance, the taxpayer must also pay compulsory supplementary aid, payable either to the beneficiary of the donation or to the Hungarian Olympics Committee.

In any given tax year, the tax incentive is available to the extent of up to 70% of the tax payable.

(6) Energy Efficiency Projects

Taxpayers are eligible for a tax allowance in connection with an investment or innovation project to comply with energy efficiency targets, upon placing the project into operation, either in the tax year following the year when the project was placed into operation or in the same tax year, at the taxpayer's discretion, and in the following five tax years. The tax allowance claimed by the taxpayer for any investment project may not exceed the lesser of a certain percentage (determined for the given region — 30% in Budapest or the non-eligible municipalities of Central Hungary; and 45% in Northern Hungary, Northern or Southern Plain or Southern, Central or West Transdanubia or Pest) of the eligible costs[44] of the investment or innovation or the forint equivalent of 30 million euros.[45] For small-sized companies, the amount of the tax allowance may be increased by 20 percentage points, whereas for medium-sized companies, by 10 percentage points. To be eligible for this tax allowance, the taxpayer must obtain a certificate recognizing the investment as qualifying as one which serves to comply with energy efficiency targets.[46]

(7) Musical Performances

Taxpayers are eligible for a tax allowance in connection with the consideration paid for live music services provided at

[38] CIT Act, Sec. 24/A(1)–(2).
[39] CIT Act, Sec. 22(3).
[40] CIT Act, Sec. 22/A(1).
[41] CIT Act, Sec. 22/A(2), point b).
[42] CIT Act, Sec. 22/C(1).
[43] CIT Act, Sec. 22/C(2).
[44] If the eligible costs are determined as a difference between the cost of energy efficient investment and the alternative invesment. If the eligible costs are determined based on the costs of the energy effecient investment only, then the intensity rates are to be halved.
[45] CIT Act, Sec. 22/E(2).
[46] CIT Act, Sec. 22/E.

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the taxpayer's restaurant in the tax year when the cost/expense was incurred.

The amount of the tax allowance may not exceed 50% of the consideration the taxpayer paid for live music services exclusive of VAT.[47]

(8) Electricity Storage Projects

Effective as of 2024, there is a new tax incentive for investments in developing electricity storage facilities. The tax allowance is available for the tax year following the year in which the investment is put into service, or the tax year in which the investment is put into service, at the taxpayer's option, and for the following five tax years.[48] Detailed rules will be set out in the decree of the Ministry of Finance, which is, however, not yet published.

To qualify for the tax allowance, the taxpayer must purchase at least 75% of the energy fed into the electricity storage facility in a given year from a renewable energy power plant connected to the public grid at the same point as the electricity storage facility.[49] The tax allowance claimed by the taxpayer for a given taxpayer and for an investment project may not exceed 30% of the eligible costs (40% for medium sized companies and 50% for small sized companies) of the investment at present value or 30 million euros.[50] The assets forming part of the investment must be operated and used for at least five years after commissioning.[51]

The taxpayer intending to make use of this tax allowance must report such intention to the Ministry of Finance prior to commencing the investment.

With regards to the same investment, this tax allowance is not available together with the development tax incentive, the energy efficiency tax incentive nor with temporary crisis aids, discussed above.[52]

c. Low Interest Loans

From time to time, the Hungarian Government launches a program under which certain taxpayers, usually SMEs, can have access to preferential interest rate loans from commercial banks. The purpose of these loans is defined in the government program concerned and generally aims to encourage economic growth and creation of new jobs.

3. Restrictions

There are no restrictions on foreign ownership or investment. The policy of the Hungarian government is to encourage industries that require highly qualified, skilled labor. In addition, there are no restrictions on currency movements and, as of 2006, no withholding tax on corporate dividends.

[47] CIT Act, Sec. 22/F.
[48] CIT Act, Sec. 22/H(1).
[49] CIT Act, Sec. 22/H(2).
[50] CIT Act, Sec. 22/H(4)–(5).
[51] CIT Act, Sec. 22/H(11).
[52] CIT Act, Sec. 22/H(15).

B. Currency and Exchange Controls

1. Currency

The official currency of Hungary is the forint (HUF). The monetary policy is determined by the Hungarian National Bank (*Magyar Nemzeti Bank*).

2. Foreign Exchange Regulations

The foreign exchange rules were liberalized by Act No. XCIII of 2001, which provides that the transactions and acts of foreign residents and foreign nonresidents performed with foreign currency, Hungarian currency and claims in Hungarian currency may be carried out freely.[53] This rule notwithstanding, there are some laws that contain obligations affecting foreign exchange transactions (for example, regulations on money laundering and supplying data for statistical purposes). The most important regulation in this regard is that, under Subsection (1) of Section 6 of Act LIII of 2017 on Money Laundering, foreign exchange providers are required to carry out "know your client" due diligence when establishing a business relationship for the first time or when carrying out individual transactions amounting to at least HUF 3.6 million (approximately 10,000 euros).

A company doing business in Hungary is required to open a bank account at a Hungarian bank; the bank account may consist of foreign-currency accounts. Hungarian legislation allows dividend remittances and, if applicable, capital repatriation to the foreign investor. The HUF amount is converted at the foreign exchange rate set by the commercial banks affected by the transaction.

C. Trade and Commerce Regulation

1. Imports and Exports

a. Licenses and Quotas

In general, products and services may be imported freely into Hungary, subject to certain restrictions. Since Hungary's accession to the European Union (on May 1, 2004), trade with other EU Member States takes place within the framework of the EU internal market, the main principles of which are the free movement of goods, services, capital, and persons.

Trade between the European Union and third countries is also regulated by EU legislation, within the framework of the European Union's common commercial policy. Regulation (EU) No. 2015/478 of the European Parliament and of the Council of March 11, 2015, on common rules for imports (the "Import Regulation") applies to imported products originating in third countries, except for textile products subject to specific import rules under Regulation (EU) 2015/936 and products originating in certain non-EU countries listed in Regulation (EU) 2015/755.

According to the general rule under the Import Regulation, products can be freely imported into the European Union and, accordingly, are not subject to any quantitative restrictions, without prejudice to the safeguard measures which may be tak-

[53] Act No. XCIII of 2001, Sec. 1(3).

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en under the Import Regulation. Safeguard measures may be applied when products are imported into the European Union in such greatly increased quantities and/or such terms or conditions as to cause, or threaten to cause, serious injury to EU producers.[54]

In addition, neither the EU rules on the internal market nor the Import Regulation preclude the adoption or application by EU Member States of measures on grounds of public morality, public policy or public security; protection of the health and life of humans, animals and plants, the protection of national treasures; the protection of industrial and commercial property; and special formalities concerning foreign exchange.[55]

Under Hungarian law, Government Decree No. 52/2012 (III.28) on the Trade of Goods, Services, and Rights of Material Value Traversing the State and Customs Frontier (the "Trade Decree") provides for certain exceptions from the EU free trade rules set out above. Under this decree, exports or imports of certain products require a license from the Hungarian Trade Licensing Office, for example, armaments, radioactive materials, and military engineering defense technology.[56]

(1) Anti-Dumping Regulations

Since Hungary's accession to the European Union, EU anti-dumping regulations, are applicable. The European anti-dumping regulations are set out in Regulation (EU) 2016/1036 of the European Parliament and of the Council of June 8, 2016, on protection against dumped imports from countries not members of the European Union (the "Anti-dumping Regulation"). The aim of the Anti-dumping Regulation is to protect the European Union against imports dumped from third countries, and its application is based on two conditions: (i) the existence of dumping; and (ii) proof of injury to EU industry, be it actual injury to, the threat of injury to, or material delay in the establishment of, such an industry.[57]

(2) Quotas and Other Non-Tariff Barriers

Council Regulation (EC) No. 717/2008 of July 17, 2008 (the "Quota Regulation") established an EU procedure for administering quantitative quotas. The Quota Regulation applies to import and export quotas, whether autonomous or conventional, established by the European Union.[58]

The Quota Regulation does not apply to agricultural products, textile products or products covered by special import rules that state specific provisions for the administration of quotas.

The European Commission publishes a notice in the Official Journal of the European Union to announce the opening of quotas, set the allocation method and conditions to be fulfilled by license applications, time limits for submission, and a list of the competent national authorities to which they must be sent. Quotas must be allocated among applicants as soon as possible after they have been opened.[59]

Quotas may be administered by one of the three methods set out in the Quota Regulation: (i) the method based on traditional trade flows; (ii) the method based on the order in which applications are submitted; and (iii) the method of allocating quotas in proportion to the quantities requested.[60]

b. Custom Duties and Other Taxes

As stated above, Hungary is subject to the customs regulations of the European Union. Tariffs are abolished within the European Union. Custom duties are, thus, only levied on goods imported into Hungary from third countries. Import duties are calculated at the applicable rate, which varies from one category of product to another.

c. Documentation

The detailed customs procedural provisions are set out in Act CLII of 2017 and NGM Decree No. 11/2016 (IV.29).

2. General Regulation of Business

a. Monopolies

Act No. LVII of 1996 (the "Competition Act") contains regulations harmonized with EC legislation. As a general principle, the Competition Act prohibits the conduct of economic activities in an unfair manner, in particular, in a manner that violates or jeopardizes the lawful interests of customers, buyers and users, as well as competitors, or in a way that is in conflict with the requirements of business integrity.

Furthermore, there is a prohibition on abuse of a dominant position, in particular:

(i) Fixing purchase or sales prices unfairly in business relations, including where general contract terms and conditions are applied, or stipulating unjustified advantages by any other means, or forcing the acceptance of detrimental terms and conditions on the other party;

(ii) Restricting production, distribution, or technical development to the detriment of final trading parties;

(iii) Refusing to establish or maintain business relations adequate to the nature of the transaction without any justification;

(iv) Influencing the other party's business decisions for purposes of gaining unjustified advantages;

(v) Withdrawing goods from general circulation or withholding goods without justification prior to price increases or for purposes of causing prices to rise, or by means otherwise capable of securing unjustified advantages or causing a disadvantage in competition;

(vi) Making the supply and acceptance of goods contingent on the supply or acceptance of other goods, or making the conclusion of a contract conditional on undertaking any commitment that, due to its nature or with regard to

[54] Regulation (EU) No. 2015/478 of the European Parliament and of the Council of March 11, 2015, Art. 15.

[55] Import Regulation, Art. 24.

[56] Government Decree No. 52/2012 (III.28) on the Trade of Goods, Services, and Rights of Material Value Traversing the State and Customs Frontier ("Trade Decree").

[57] Anti-dumping Regulation, Arts. 1–3.

[58] Quota Regulation, Art. 1.

[59] Quota Regulation, Art. 3.

[60] Quota Regulation, Chapter II.

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the usual contractual practice, does not form part of the subject of the contract;

(vii) In connection with transactions with an identical value or of the same nature, discriminating against certain business partners without due cause, including in the setting of prices, payment deadlines, discriminatory sales or purchase conditions, or the employment of methods that cause disadvantage to certain competing business partners;

(viii) Forcing competitors off the relevant market, or using excessively low prices that are not based on better efficiency in comparison to that of competitors, so as to prevent competitors from entering the market;

(ix) Hindering competitors entering the market in any other unjust manner; or

(x) Creating a market environment that is unreasonably disadvantageous for competitors or influencing their business decisions for purpose of gaining unjustified benefits.[61]

The Competition Act defines a "dominant position" as follows: when a company is in a position to conduct its economic activities in a given market in a manner largely independent of others without having to take into consideration the market policy of its competitors, suppliers, or business partners so as to eliminate effective competition.[62]

The following criteria are taken into consideration for purposes of assessing the existence of a dominant position:

(i) The costs and risks entailed in entering into the relevant market and exiting it, and the implementation of the technical, economic, or legal background that may be required;

(ii) The assets, financial strength and income of the company or group of companies, and/or the development thereof; and

(iii) The structure of the relevant market, market share ratios, the conduct of the market participants, and the economic influence exercised by the company or group of companies over the development of market trends.

A dominant position may be achieved by a single company or group of companies, or by several companies or groups of companies jointly.

b. Mergers

Under Hungarian law, a concentration is deemed to arise where:

(i) Two or more previously independent companies merge, or one merges into another, or a part of a company becomes a part of another company that is independent of the first company;

(ii) Where one or more companies jointly acquire the right of direct or indirect control over one or more previously independent but related companies; or

(iii) A number of independent companies jointly set up a company to be controlled by them that is capable of functioning in all respects as an independent company.[63]

Prior notice to the Competition Authority is required for the merger of companies if the combined net sales revenue of all the groups of companies involved and the net sales revenues of the companies controlled jointly by members of the groups of companies involved with other companies in the previous financial year exceeded HUF 20 billion, and among the groups of companies involved there are at least two groups with net sales revenues of HUF 1.5 billion or more in the previous year together with the net sales revenues of companies controlled by members of the same group jointly with other companies.[64] In addition, where the above thresholds are not reached, the merger may be reported to the Competition Authority nonetheless, if it is not immediately apparent that the concentration does not significantly reduce competition in the relevant market and if the combined net turnover of all groups of companies involved exceeded HUF 5 billion in the previous financial year together with the net turnover of companies controlled by members of the same group jointly with other companies.[65]

It should be noted that — in the public interest and, more specifically, for purposes of preserving jobs or ensuring the security of supplies — the Government may declare a merger of companies to be of strategic importance at the national level. Such a merger does not require the authorization of the Hungarian Competition Authority.

There is no notification requirement for the temporary (no more than one year) acquisition of control or assets by an insurance company, insurance holding company, credit institution, financial holding company, mixed-activity financial or insurance holding company, investment firm, investment fund or investment fund management organization, if the acquisition is made in preparation of resale, and if the company acquiring control does not exercise its rights of control, or if such rights are exercised only to the extent that it is absolutely necessary.[66]

In the case of mergers, including mergers by acquisition, and the creation of joint companies, the direct participant, or in all other cases, the party acquiring the business unit or direct control, or the company having direct control thereof, is required to file the notification to the Hungarian Competition Authority. Until the Competition Authority has completed its due diligence with regard to the notification or the time frame set for such proceeding lapses, voting rights and the right to appoint or delegate executive officers acquired as a result of the merger cannot be exercised. In addition, until the procedure is finalized or the statutory deadline expires, the *status quo ante* to the merger regarding the decision-making process of the merging or acquired company, and the previously independent company or business unit, and the business relations of the merging companies, will continue to apply.[67]

If control rights are not conferred on the company acquiring control, the above restrictions will not apply to the conclusion of the merger agreement, the public takeover bid, or

[61] Competition Act, Sec. 21.
[62] Competition Act, Sec. 22, Subsec. (1).
[63] Competition Act, Sec. 23(1).
[64] Competition Act, Sec. 24(1).
[65] Competition Act, Sec. 24(4).
[66] Competition Act, Sec. 25(1).
[67] Competition Act, Sec. 29(1).

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the underlying acts and legal statements required for the execution of the merger. Furthermore, the Competition Authority may grant dispensations from the above restrictions prior to making its final decision about the merger itself.

The Competition Authority has the right to prohibit the merger of the companies if the concentration constitutes a significant impediment to competition in the relevant market, particularly as a consequence of the creation or strengthening of a dominant position.[68]

If the considerable reduction of competition potentially resulting from a merger can be effectively prevented on the fulfillment of prior or subsequent conditions — such as the sale of specific business units or assets, or the termination of control over any indirect participant — in the event of compliance with the relevant codes of conduct, and if the companies affected in this context undertake to modify the merger agreement accordingly, or to follow the codes of conduct if the merger is executed under such conditions, the Hungarian Competition Authority will pass a resolution detailing these conditions, instead of prohibiting the merger.[69] If authorization is granted contingent on the fulfillment of a prior condition, the merger will become effective once the condition has been fulfilled. An authorization contingent on the fulfillment of a subsequent condition will become effective when it is granted.

c. Restrictive Trade Practices

Under Section 11 of the Competition Act, agreements and concerted practices between companies, as well as the decisions made by organizations of companies established based on the right of association, or their public bodies or associations, that are designed to prevent, restrict or distort economic competition, or that may display or in fact do display such an effect, are prohibited. An 'agreement' as such is not considered to exist if it is concluded between undertakings which are not independent of each other, or between the undertaking and one of the undertakings which jointly controls it and relates only to the conduct on the relevant markets on which the jointly controlled undertaking operates.

The prohibition applies, in particular, to:

(i) Fixing purchase or sales prices, and defining other business conditions, whether directly or indirectly;

(ii) Restricting or keeping under control manufacture, distribution, technical development or investment;

(iii) Dividing sources of supply and restricting the freedom to choose among them, as well as excluding specific trading parties from the purchase of certain goods;

(iv) Dividing the market, excluding any party from selling and restricting the choice of sales methods;

(v) Preventing any party from entering the market;

(vi) Discriminating against certain partners, in the form of the setting of prices, the establishment of payment deadlines, discriminatory sales or purchase conditions, or the employment of methods that disadvantage certain business partners, with respect to transactions with an identical value or of the same nature; and

(vii) Rendering the conclusion of a contract conditional on undertaking any commitment that, due to its nature or usual contractual practice, does not form part of the subject of the contract.[70]

Agreements of minor importance, however, may not be subject to prohibition. An agreement is construed as being of minor importance: (i) in the case of agreements between competitors, if the combined share of the parties concluding the agreement and of their dependent companies does not exceed 10% of the market in question; or (ii) in the case of agreements between non-competitors, if the combined share of the parties concluding the agreement and of their dependents does not individually exceed 15% of any of the relevant markets. This exemption does not apply if the aim of the agreement is to restrict, prohibit or distort competition including, but not limited to, fixing purchase or sale prices, whether directly or indirectly, between competitors or dividing the market among competitors.[71]

This exemption notwithstanding, any agreement that is able to create an environment, in conjunction with other similar agreements, as a result of which competition in the relevant market is substantially obstructed, restricted or distorted, is subject to prohibition. In this case, although the agreement may be declared illegal by the Competition Authority, no penalty will be imposed.[72]

The Hungarian government may exempt certain types of agreements from the prohibition against restrictive market practices by means of a decree. Recently, it adopted Government Decree 306/2022 (VIII.11.) on exempting certain categories of vertical agreements from the prohibition of restrictions of competition in line with the EU's Vertical Block Exemption Regulation (Commission Regulation (EU) 2022/720).

The prohibition in Section 11 of the Competition Act will not apply to an agreement if the following conditions are met:

(i) The agreement provides for facilities for improving the efficiency of production or distribution, promoting technical or economic development, or improving methods of environmental protection or competitiveness;

(ii) A fair portion of the benefits arising from the agreement is conveyed to third parties (typically the consumers);

(iii) The concomitant restriction or exclusion of economic competition does not exceed what is required for attaining economically justified common goals; and

(iv) It does not exclude competition with respect to a considerable portion of the goods concerned.[73]

d. Price Controls

As a general rule, the selling price and the retail price of each product must be indicated in forints and (with a few exceptions) inclusive of value added tax (VAT). Enterprises are

[68] Competition Act, Sec. 30(1).
[69] Competition Act, Sec. 30(3).
[70] Competition Act, Sec. 11(2).
[71] Competition Act, Sec. 13(2)–(3).
[72] Competition Act, Sec. 13(4).
[73] Competition Act, Sec. 17.

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free to determine their prices and, as stated above, price fixing among parties is considered to be a restrictive market practice.

The prices of certain products and services, however, are fixed by the government or the local municipality. These include certain public utility services, public transportation, and tobacco.

Note: In an attempt to manage the growth in the CPI, the Hungarian government adopted legislation aimed at controlling the prices of certain fast selling products: as of February 1, 2022, the prices of certain consumer products (white sugar, white wheat flour, sunflower oil, pork leg, chicken backs and breast, cow's whole milk) cannot be higher than the price they were sold at in mid-October last year. This legislation is now repealed with effect as of July 31, 2023. Partially to replace this legislation, the Hungarian government now requires commercial stores with a turnover of more than HUF one billion to hold weekly promotions in 20 product categories.

e. Securities Regulation

The Budapest Stock Exchange (BSE) is the venue for trading shares of public companies limited by shares and registered in Hungary, securities issued by businesses, and Hungarian state and other securities. The BSE has four trading sections: equities, securities, derivatives, and commodities.

The BUX index is the official index of blue-chip shares listed on the BSE. It is calculated in real time based on the actual market prices of a basket of shares. The index shows the average price of the shares with the biggest market value and turnover in the equity section. The BUX is therefore the most important index for trends in the stock exchange.

The BSE was one of the first exchanges in the world to use free-float capitalization weightings instead of the traditional market capitalization weightings beginning in October 1999.[74]

The BUX index is also a tradeable index. Its futures and option products are available in the BSE's derivatives section.

3. Licensing and Franchising in Hungary

a. Patents

A patent ensures legal protection of inventions by granting a better position to the owner of an invention compared with that of rivals in the market for products and technology. The owner of the invention has an exclusive right to exploit the invention, but the period and the territorial validity of patent protection are limited. Patent protection is valid up to 20 years starting from the day on which the patent application was filed and applies solely in the countries where the protection was granted.

Hungarian patents may be obtained by means of a national or European application or by means of an application submitted within the framework of the Patent Cooperation Treaty (PCT), provided the application and the invention meet the requirements set out in the respective laws and regulations.

In foreign countries, patent protection may be obtained by means of an application filed with a national office or by means of a European application for the Member States of the European Patent Convention (EPC). The application may be filed directly or within the framework of the PCT.

The patent will be issued at the end of the granting procedure before the competent authority.

Other proceedings in connection with patent protection also fall within the competence of the Hungarian Intellectual Property Office.

The Board of Experts on Industrial Property operating at the Hungarian Intellectual Property Office give opinions on legal controversies that arise in Hungary in connection with industrial property, by mandate or at the request of a court.

In the absence of a provision of an international treaty to the contrary, foreign applicants must be represented by an authorized patent attorney or an attorney-at-law in all patent matters within the competence of the Hungarian Intellectual Property Office.

Subject to certain conditions, patent applications may be supported by the SME fund. This applies to Hungarian SMEs, which may apply for a government subsidy when they apply for patent protection either in Hungary or abroad.

The ability to search published patent documents (which may afford substantial information with the potential to promote technical development) is open to all.

b. Trademarks and Trade Names

A trademark may consist of any signs which are capable of distinguishing goods or services from the goods or services of others and can be represented in a manner which enables the government as well as the public to determine the clear and precise subject matter of the trademark protection.[75]

Once trademark protection is granted, the beneficiary is granted the right to use the trademark in relation to the goods or services for which it is registered or to let others use the trademark under terms agreed with the registered owner. In addition, the beneficiary is authorized to take legal action against others that might be infringing the registration by using the same or a similar trademark for the same or similar goods or services for which the trademark is registered.

The signs below may be granted trademark protection:

(i) Words, word combinations, including personal names and slogans;

(ii) Letters and digits;

(iii) Designs and graphics;

(iv) Flat or three-dimensional figures, including the shape of the goods or of their packaging;

(v) Colors, combinations of colors, light signals and holograms;

(vi) Sounds;

(vii) Motion displays;

(viii) Position signs;

(ix) Multimedia displays;

[74] https://bse.hu/portal/Products-And-Services/Indices/BUX.

[75] Trademark Act XI of 1997, Sec. 1(1).

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(x) Patterns; and

(xi) Combinations of signs.

Registration is not allowed for signs excluded from protection by law. Such excluded signs include, *inter alia*: (i) signs that may, in the course of trade, refer to some characteristic such as the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or services concerned; (ii) signs that consist exclusively of signs which have become customary in the current language or in the fair and established practices of trade; (iii) signs that are devoid of any distinctive character for other reasons; (iv) signs that consist exclusively of the shape or another characteristic, which results from the nature of the goods themselves or which is necessary to obtain a technical result or which gives substantial value to the goods; (v) signs that are identical or similar to, a mark already on the register with respect to the same goods or services, or similar goods or services; (vi) signs that are identical or similar to a mark that has a reputation in Hungary even with respect to dissimilar goods or services; and (vii) signs that are identical or similar to a mark that is well-known in Hungary even if that mark is unregistered.

Trademark protection in Hungary can be obtained by filing either a national trademark application at the Hungarian Intellectual Property Office or an international trademark application governed by the Madrid Agreement and/or the Madrid Protocol on the International registration of Trade Marks.

A foreign applicant, i.e., a person or company that is not resident in an EEA country, must authorize a professional representative resident in the relevant country to file a patent. For Hungarian protection specifically, a foreign applicant must appoint a representative that is resident in Hungary.

Trademark protection is valid for 10 years beginning on the date on which the application is filed; the protection term may be extended through further 10-year periods at the registered owner's request.[76]

c. Industrial Know-How

Effective August 8, 2018, trade secrets, including know-how, are protected under Act LIV of 2018, adopted by the Hungarian Parliament to implement the provisions of Directive (EU) 2016/943 of the European Parliament and of the Council. Know-how is defined as technical, economic, and other practical knowledge of value which is kept in a form enabling its identification, and which includes accumulated skills and experience and any combination thereof.

The owners of the know-how have the right to use, disclose, publish or transfer the know-how. The unlawful acquisition, use, disclosure or publication of the know-how is considered an infringement of the right to the know-how.

This protection does not apply where a person obtains the know-how:

(i) By means of development independent of the proprietor;

(ii) By way of testing or analyzing a lawfully acquired product or lawfully received service (unless the person is bound by confidentiality); or

(iii) By any other practice which is in line with fair commercial practices.

Any disputes arising in connection with the infringement of know-how are to be settled by the county courts. The sanctions the courts can impose include:

(i) A prohibition on the production, offering, placing on the market or use of infringing goods;

(ii) Destruction of the infringing goods or their withdrawal from the market;

(iii) Recall of the infringing goods from the market;

(iv) Restitution of the economic gains achieved through the infringement; and

(v) Publication of the decision adopted in the case.[77]

d. Copyrights

Copyright is protected under Act No. LXXVI of 1999 (the "Copyright Act"). The Copyright Act protects literary, academic, scientific, and artistic works. Accordingly, all literary, academic, scientific, and artistic works are protected by copyright, regardless of whether they are designated in the Copyright Act. The following in particular are considered works of this kind:

(i) Literary works (for example, literature, technical writings, and academic and scientific publications);

(ii) Public speeches;

(iii) All forms of computer programs and related documents ("software"), whether recorded as source code, as object code or in any other form (including user programs and operating systems);

(iv) Plays, musicals, ballets and pantomimes;

(v) Musical compositions with or without lyrics;

(vi) Radio and television programs;

(vii) Works made by means of drawing, painting, sculpting, engraving or lithographs, or in any other similar manner as well as designs for such works;

(viii) Photographic works;

(ix) Maps and other cartographic works;

(x) Architectural works and related plans as well as plans for building complexes and urban architecture;

(xi) Designs for technical structures;

(xii) Applied art works and related designs;

(xiii) Costumes and scenery, and related designs;

(xiv) Industrial designs; and

(xv) Any databases recognized as compilations.[78]

[76] Trademark Act XI of 1997, Sec. 11.

[77] Act LIV of 2018, Sec. 7(1).

[78] Act No. LXXVI of 1999 ("Copyright Act"), Sec. 1(2).

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A work or creation qualifies for copyright protection based on its individualistic and original nature deriving from the intellectual activity of the author. Qualification for copyright protection does not depend on quantitative, qualitative or aesthetic characteristics, or any judgment as to the quality of the work.

It should be noted that the protection stipulated in the Copyright Act extends to works that were first published abroad only if the author is a Hungarian citizen or is entitled to protection based on an international treaty or reciprocity.[79]

Copyright protection extends to the reworking, adaptation or translation of the work of another author — without prejudice to the rights held by the author of the original work — if it has an individualistic and original nature.

In addition to the Hungarian Copyright Act, the EC Directives on copyright are also applicable, including the following:

(i) Directive 2014/26/EU of the European Parliament and of the Council of February 26, 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market;

(ii) Directive 2011/77/EU of the European Parliament and of the Council of September 27, 2011, amending Directive 2006/116/EC on the term of protection of copyright and certain related rights;

(iii) Directive 2009/24/EC of the European Parliament and of the Council of April 23, 2009, on the legal protection of computer program; and

(iv) Directive 2004/48/EC of the European Parliament and of the Council of April 29, 2004, on the enforcement of intellectual property rights.

D. Immigration Regulations

Hungary's visa regulations are in compliance with the regulations and recommendations of the European Union and the Schengen Agreement. Hungary joined the Schengen area in December 2007. Regarding Hungary's Schengen membership, the following aspects are worth highlighting:

(i) Visas and residence permits issued by any Schengen area Member State are valid in Hungary and vice versa; and

(ii) Visas issued by Hungarian legations abroad and residence permits granted by Hungarian national authorities are valid for the Schengen area as specified on the stamp of the visa issued in the Member States: "ETATES SCHENGEN," i.e., valid for all Schengen States.

The Schengen visa and entry regulations apply only with respect to stays that do not exceed 90 days. In the case of longer stays, the visa regulations of the respective Member State apply.

In addition to residents of Member States, nationals of certain third countries may enter Hungary without a visa. Under current law,[80] however, this only applies with respect to a resident of a third country who is in possession of a valid travel document entitling the holder to cross the border that satisfies the following criteria: (i) its validity extends at least three months after the intended date of departure from the territory of Hungary; and (ii) it has been issued within the previous 10 years.

As noted above, for stays longer than 90 days, special provisions apply.

All EEA nationals have the right of residence for an intended stay of more than 90 days within any 180-day period if they:

(i) Intend to engage in some form of gainful employment;

(ii) Have sufficient resources for themselves and their family members to prevent them becoming a burden on the social assistance system of Hungary during their period of residence, and have comprehensive sickness insurance coverage for health-care services as prescribed under specific other legislation, or can guarantee that they have sufficient resources for themselves and their family to pay for such services as required by statutory provisions; or

(iii) Are enrolled at an educational institution for the principal purpose of following a course of study, including vocational training and adult education that offers an accredited curriculum, have sufficient resources for themselves and their family members to prevent them becoming a burden on the social assistance system of Hungary during their entire period of residence, and have comprehensive sickness insurance coverage for health-care services as prescribed under specific other legislation or can guarantee that they have sufficient resources for themselves and their family members to pay for such services as required by statutory provisions.

The family members of EEA nationals who satisfy the requirements set out in (i) or (ii), above, also have the right of residence, as do the spouses and dependent children of EEA nationals who meet the requirements set out above in (iii).

A more complex resident permit procedure, governed by Act XC of 2023, applies to persons coming from outside the EEA.

1. Work Permits

Subject to a few exceptions, foreigners need work permits to work in Hungary. Again, a distinction is made depending on whether the employee is a citizen of an EU Member State or a third country.

2. Employment of Non-EU Citizens

Under provisions in force from January 1, 2014, subject to a few special exceptions, the residence permit necessary for the employment of a third country national is issued under a consolidated permit procedure and no separate work permit may be applied for if the residency is aimed at establishing an employment relationship. The relevant provisions are set out in Government Decree No. 445/2013 (XI.28.).

Individual work permits and consolidated permits are usually valid for a maximum of two years, with an option to extend for another two years.[81] Although it is the employee's duty to

[79] Copyright Act, Sec. 2.

[80] Regulation (EU) No. 610/2013 of the European Parliament and of the Council of June 26, 2013.

[81] Government Decree No. 445/2013 (XI.28.), Sec. 4(2).

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apply for a permit, in practice employers usually take this responsibility on themselves. In any case, employers must first document that they have already tried to fill the position concerned with a Hungarian citizen with the help of the employment center. Next, the employer must submit an application for the permit using certified copies of documents verifying the personal data and qualifications of the employee.

In certain cases, the law allows a permit to be issued for third country citizens without any investigation of the job market.[82] These special cases include, *inter alia*, situations in which: a foreign national is employed in a key position with a foreign company established in Hungary; the majority of a business association is owned by foreign nationals; or the percentage of foreign employees does not exceed 5%.

In addition, with respect to the following positions, third country citizens may be employed simply by making a formal announcement, without the need for a work permit. These positions include, for example, managers of branch offices, representatives or senior officers of foreign companies, and members of the supervisory board of companies with foreign shareholders.[83]

Based on an appropriate work visa, a foreign national is required to apply for a residence permit from the competent authority, unless a consolidated permit procedure applies. Non-EU citizens may only begin their employment in Hungary after they have obtained all permits and documents necessary for their employment.

3. Employment of EU Citizens

In general, since January 1, 2009, citizens of EU Member States and their family members may be employed in Hungary without work permits.

E. Labor Relations

Hungary is an attractive country to invest in because of the availability and low cost of skilled labor with language skills.

Act No. I of 2012 on the Labor Code (the "Labor Code") sets out the relevant provisions regarding employment in Hungary.

1. Employment Contracts

Employment contracts in Hungary are usually established for an indefinite period of time. It is also customary to agree on a probationary period for a maximum of three months at the beginning of the employment agreement. (If there is a collective bargaining agreement in place, the duration of the probationary period can be extended up to six months in the collective bargaining agreement).[84] During the probationary period, both parties are allowed to terminate the employment agreement with immediate effect and, in this case, neither the employer nor the employee is required to justify the termination.

2. Contract Termination

An employment contract can be terminated based on mutual agreement of the parties or by unilateral notice. It is very important to emphasize that, as a general rule, Hungarian Labor Law requires an employer to justify its reasons for dismissing an employee.[85] Additionally, an employee may only be dismissed for reasons in connection with his/her ability or his/her behavior in relation to the employment relationship or the employer's operations.[86] In addition, the grounds for dismissal must be clearly stated in writing and need to be authentic and well-substantiated. An employee can contest the reasons for his/her dismissal with the competent labor courts within a 30-day period after notice of dismissal is given.

Comment: Since Hungarian labor courts tend to have a bias in favor of employees, it is highly advisable to avoid labor law disputes at all costs.

Special rules apply to layoffs that affect a large number of employees at the same time.[87] Furthermore, there are specific situations in which an employment agreement cannot be terminated (for example, during maternity leave).

While the Labor Code requires employers to justify dismissing an employee, as a general rule, employees may terminate their employment agreements by giving notice without having to state a cause. The notice period is 30 days, but in the case of termination by the employer, this period increases based on the number of years of employment.[88] In addition, in certain circumstances, employees may be eligible for severance pay after at least three years of employment. Depending on the length of employment, the amount of the severance payment ranges from one to six months' salary.[89]

3. Annual Leave

The statutory minimum amount of paid leave is 20 days per year, increased to up to 30 days depending on the employee's age (rather than length of employment).[90] Certain groups of employees (employees with children, minors, etc.) are entitled to additional vacation days.

4. Trade Unions

Trade unions are designed to protect and represent employees' rights and interests provided under the law. Unions are only strong in the public sector: the national railway, public transport companies, the healthcare profession, etc.

5. Working Conditions

Regular working hours are 40 hours per week, Monday to Friday. An employer may, however, establish a variable work schedule for a certain period of time, which allows an unequal allocation of working hours for a given employee. Work time conditions (for example, the ceiling on working hours) and extra payment for extraordinary (overtime) work, night shifts, or work on Sundays or public holidays are strictly regulated by law. Public holidays are: (i) January 1; (ii) March 15; (iii) Good Friday; (iv) Easter Monday; (v) May 1; (vi) Whit Monday; (vii) August 20; (viii) October 23; (ix) November 1; and (x) December 25–26.

[82] Government Decree No. 445/2013 (XI.28.), Sec. 9.
[83] Government Decree No. 445/2013 (XI.28.), Sec. 15.
[84] Act No. I of 2012 on the Labor Code ("Labor Code"), Sec. 50(4).
[85] Labor Code, Sec. 66(1).
[86] Labor Code, Sec. 66(2).
[87] Labor Code, Sec. 71.
[88] Labor Code, Sec. 69.
[89] Labor Code, Sec. 77(3).
[90] Labor Code, Sec. 116.

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6. Wages and Salaries

Effective January 1, 2024, the mandatory minimum gross monthly wage is HUF 266,800; for workers employed in positions requiring a secondary school diploma or advanced vocational training (or higher education) it is HUF 326,000 per month.

Comment: Although the annual gross average salary in Hungary is more than twice the minimum wage (i.e., approximately US$ 20,000), the availability of a cheap but qualified labor force is evidently one of Hungary's more desirable attributes for foreign investors.

F. Financing the Business

Hungary has its own domestic credit institutions as well as branches of many international credit institutions. These credit institutions offer a wide range of banking services, such as checking and savings accounts, money transfers, foreign exchange services, and both corporate and personal lending and financing.

In the aftermath of the economic downturn in 2008, the banks experienced difficulties as a result of some of the measures adopted by the Hungarian government to prevent the mass foreclosure of mortgages of individuals. While the Hungarian population's indebtedness in foreign currency was undoubtedly a major issue in Hungary during the economic crisis, which difficulties consequently also affected corporate financing, the financial market seems to have fully recovered.

Financing may also be obtained through investment firms, private equities and other financial sector professionals.

The operations of credit institutions and financial service companies are strictly monitored by the competent department of the Hungarian National Bank.

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III. Forms of Doing Business in Hungary

The regulations regarding most Hungarian business entities are contained in the Civil Code. The Civil Code entered into effect on March 15, 2014, and replaced the former Company Act IV of 2006 (the "Company Act"). Business entities must comply with the Civil Code, taking the transitional rules described below into consideration.

Companies already registered, or in the process of being registered, in the corporate registry on March 15, 2014 (i.e., before the Civil Code entered into effect) could elect whether to operate under the provisions of the Civil Code. Companies had to note this in the first amendment of their articles of association and had to file their elections with the court of registration. Private limited liability companies that lacked the minimum registered capital prescribed by the Civil Code (HUF three million) could continue to operate through March 15, 2016, without raising additional capital. In such circumstances, the articles of association (and any potential amendments to them) were governed by the rules of the former Company Act.

The rules of the Civil Code apply to companies from the date of the above election or, in the absence of such an election, at the latest as of March 15, 2015, in the case of general and limited partnerships, and as of March 15, 2016 in the case of private limited liability companies (see III.B., below) and corporations (see III.C., below).

Notwithstanding the above, private limited liability companies that lacked the minimum registered capital prescribed by the Civil Code and were already registered, or in the process of being registered, in the corporate registry on March 15, 2014, had either to increase their registered capital as required under the Civil Code by March 15, 2017, or make a decision on transformation or merger. Until the date of such decision, such companies had to apply the provisions of the Company Act. Simultaneously with such decision, such companies also had to make a decision on their further operation under the provisions of the Civil Code.

The articles of association of a company did not have to be amended to match the Civil Code if they only alluded to the former Company Act in general terms. If particular areas of the Company Act were cited, however, the articles had to be amended to ensure compliance with the Civil Code within the deadlines indicated above. Under the "dispositive regulation" (a general principle of the Civil Code), entities are not required to strictly follow the Civil Code and may deviate from its provisions when conducting business, except as specifically prohibited by law. Based on the above, members or shareholders of a company may deviate from the Civil Code with regard to their relationships among each other or *vis-à-vis* the company, and also with respect to the organization and operation of the company. Unless prohibited by the Civil Code, deviations are allowed provided they do not violate the rights of creditors or employees, infringe minority rights of members, or prevent the supervision of the legitimacy of operations.

Certain business forms, such as sole proprietorships and branches of foreign corporations, are governed by separate acts. These acts and the Civil Code rules are further discussed below.

A. Private Entrepreneurs and Sole Proprietorships

1. Private Entrepreneurs

Under Act CXV of 2009 on Private Entrepreneurs and Sole Proprietorships (the "Sole Proprietorship Act"), natural persons are entitled to carry on economic activity — normally for remuneration — on their own account, as private entrepreneurs, in the territory of Hungary on a regular basis with a view to making a profit.[91]

The following persons may carry on the activities of a private entrepreneur:

(i) Hungarian nationals;

(ii) Nationals of any EU Member State or any State that is a party to the Agreement on the European Economic Area (EEA), and persons enjoying the same treatment as nationals of EEA States by virtue of an agreement between the European Union and its Member States and a non-EEA State with respect to establishment;

(iii) Persons, other than those referred to above in (ii), exercising the right of free movement and residence in the territory of Hungary; and

(iv) Persons who have been granted long-term resident status, persons holding residence permits for the purpose of self-employment, employment, family reunification or the pursuit of studies, as well as exiles and stateless persons holding residence permits granted on humanitarian grounds.

The following persons may not carry on the activities of a private entrepreneur:

(i) Any person lacking legal capacity or having diminished capacity;

(ii) Any person who is a member of a sole proprietorship or a business association subject to unlimited liability; and

(iii) Any person who has been sentenced to imprisonment for the crimes described in the Sole Proprietorship Act, until relieved from the detrimental consequences attached to prior convictions.[92]

As a condition for commencing activity as a private entrepreneur, the individual applicant is required to submit a notification in compliance with the Sole Proprietorship Act to the Hungarian Tax Authority, or, electronically, by filing a standardized form on-line. On receiving the data required for registration, the body in charge of the register will enter the private entrepreneur in the register and will assign him or her a register number.

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[91] Act CXV of 2009 on Private Entrepreneurs and Sole Proprietorships ("Sole Proprietorship Act"), Sec. 2, Subsec. (1).

[92] Sole Proprietorship Act, Sec. 3(2).

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Private entrepreneurs are subject to unlimited liability for any and all obligations arising out of, or in connection with, their activities to the extent of their personal resources.[93]

2. Sole Proprietorships

A sole proprietorship is established by a natural person who is listed in the register of private entrepreneurs; it is brought into existence when it is entered into the register of companies. A sole proprietorship is a separate legal entity, with legal capacity, but without legal personality. It may obtain rights and undertake commitments under its business name, such as the acquisition of property and the conclusion of contracts and may sue or be sued by others.

Sole proprietorships fall within the scope of Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings (the "CRA Act"); however, the provisions of the CRA Act apply subject to the exceptions set out in the Sole Proprietorship Act.

The general rule is that a sole proprietorship may have only one member. There is an exception to this rule in the case of the death of a member, when the heirs of the late member may be admitted as members of the sole proprietorship for a period of not more than three months, provided they meet all requirements prescribed by the Sole Proprietorship Act and the court of registration is notified accordingly within the deadline prescribed by the Sole Proprietorship Act. The heirs must also specify in the notification the person in charge for handling the tasks conferred on the executive officer of the sole proprietorship.[94]

A natural person may only act as a member (founder) of one sole proprietorship.

a. Formation

The charter document for the formation of a sole proprietorship must be drawn up in an authentic instrument by a notary public, or in a private document signed by the member (founder) and countersigned by a lawyer. The charter document may be signed at the earliest on the day following the date on which the member was registered in the register of private entrepreneurs.[95] A sole proprietorship may use a standard contract form to draw up its charter document. If it does so, the charter document may contain only the provisions set out in the standard form.

The charter document functions as the basic document governing the operations and finances of the sole proprietorship and may be freely established by the founder within the framework of the Sole Proprietorship Act and other legislation. However, any derogation from the Sole Proprietorship Act is allowed only if expressly permitted by law.

The competent court of registration must be notified of the formation of a sole proprietorship within 30 days from the date of signature of the charter document. The sole proprietorship will be considered established with effect from the date it is admitted to the register of companies.[96] The data in the register relating to a sole proprietorship and its member are considered public information. The member is responsible for notifying the court of registration — by electronic means — of the foundation of the sole proprietorship and any amendment of the charter document, rights, and data contained in the register of companies, as well as any other data required by law. The member bears unlimited liability towards the sole proprietorship for any damages resulting from the notification of incorrect data or from any delay in filing or failing to file the notification.

A sole proprietorship may not be set up by way of transformation or for reasons other than business operations.[97]

Sole proprietorships may not commence operations before being admitted into the register of companies.

b. Assets and Liabilities

A sole proprietorship is founded with the registered capital indicated in its charter document. If the sole proprietorship's registered capital exceeds HUF 200,000, the registered capital may consist of cash and in-kind contributions; otherwise the contributions must be in cash. The founder must indicate the amount of capital stock in the application for registration. Cash and in-kind contributions are to be made available at the time of formation.[98]

A sole proprietorship is required to include the designation "*egyéni cég*" (sole proprietorship, or its abbreviated form "*ec.*") in its name. The sole proprietorship is primarily liable for its obligations to the extent of its assets. If the assets of the sole proprietorship do not cover an obligation, the member bears unlimited liability with his or her personal resources.[99]

A sole proprietorship and its member may not be a member with unlimited liability in a business association.

If the right to perform an activity as a private entrepreneur ceases because of the establishment of a sole proprietorship, the individual and the sole proprietorship are subject to unlimited and joint and several liability for the private entrepreneur's commitments.[100] The provisions of the Civil Code regarding distributions (for example, dividends) made by a private limited liability company to its members apply similarly to payments made from a sole proprietorship to its member (see B.2.k., below).

c. Operation

The management of a sole proprietorship must either be entrusted to an executive employee or conducted by the member himself or herself.[101] If the sole proprietorship is managed by its member, the member must function as the sole proprietorship's lawful representative *vis-à-vis* third parties, the courts and other authorities. In this case, the member must represent the sole proprietorship in writing.

The member must conduct the management of the sole proprietorship with due care and diligence, as generally expected from persons in such positions, and must give priority to the interests of the sole proprietorship. In the event of the immi-

[93] Sole Proprietorship Act, Sec. 15(1).
[94] Sole Proprietorship Act, Sec. 32.
[95] Sole Proprietorship Act, Sec. 21.
[96] Sole Proprietorship Act, Sec. 24.
[97] Sole Proprietorship Act, Sec. 25.
[98] Sole Proprietorship Act, Sec. 26.
[99] Sole Proprietorship Act, Sec. 27.
[100] Sole Proprietorship Act, Sec. 27(6).
[101] Sole Proprietorship Act, Sec. 30(2).

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nent threat of the sole proprietorship becoming insolvent, the member must conduct the management of the sole proprietorship with regard to the creditors' interests. If the member of the sole proprietorship fails to fulfill the conditions prescribed for private entrepreneurs, the sole proprietorship is considered to have failed to operate in compliance with regulations pertaining to the sole proprietorship's structure and operations.[102]

The capital stock of a sole proprietorship may only be transferred to a private entrepreneur.

If the law requires an authorization from an authority to engage in a particular economic activity, the sole proprietorship must obtain such authorization before it is able to begin the activity. If an activity is subject to professional qualification, the sole proprietorship may engage in the activity if its member is able to meet the qualification requirements. If the member fails to meet the qualification requirements, the sole proprietorship may still pursue the activity if it employs persons who qualify and who perform the activity for an indefinite period of time, unless otherwise provided by law.

d. Transformation and Termination

A sole proprietorship may be transformed into a business association under the relevant provisions of the Civil Code.

A sole proprietorship must be terminated if:

(i) The period of time specified in its charter document expires or any other condition of termination is fulfilled;

(ii) The member adopts a decision to terminate the sole proprietorship without succession;

(iii) The member adopts a decision to terminate the sole proprietorship with succession (transformation);

(iv) The sole proprietorship is declared terminated by the court of registration;

(v) The court of registration orders its cancellation *ex officio*; or

(vi) The sole proprietorship is terminated by decision of the court in the course of liquidation.

The provisions of the Bankruptcy Act (see III.H.3., below) governing liquidation and bankruptcy proceedings and the provisions of the CRA Act governing winding-up and compulsory winding-up proceedings also apply to a sole proprietorship.[103]

B. Private Limited Liability Companies

A private limited liability company (*korlátolt felelősségű társaság* or *Kft.*) is a business association founded with an initial capital consisting of capital contributions of a predetermined amount. The members' liability towards the company is limited to the extent of their initial contributions and any other contributions set out in the memorandum of association. Unless otherwise provided in the Civil Code, members are not required to bear personal liability for the company's obligations.[104]

1. Formation

a. Purpose Clause

The articles of incorporation of a private limited liability company (LLC) must expressly indicate the founders' intention to set up a private limited liability company.

Private LLCs can be established for a definite or an indefinite period of time. If the articles of incorporation do not provide for a definite term, the company is established for an indefinite period of time.

b. Corporate Name

The name of a private LLC must contain the selected company form (*korlátolt felelősségű társaság*) and at least a "lead word."[105] The lead word ensures the identification of the company and helps to distinguish the company from other companies engaged in similar activities. The lead word is the first word of the corporate name. The lead word may be a foreign expression, an abbreviation or an acronym written in Roman letters. Other than the lead word, the corporate name may only consist of Hungarian words, in conformity with the rules of Hungarian grammar. In a corporate name only the lead word and the type of company (*kft.*) may be abbreviated.

In addition to its corporate name, a company may also choose to have a short corporate name. The short corporate name consists of the lead word and the abbreviated company type.

The corporate name (and the short corporate name) of a company must clearly differ from the name of any other company already registered in Hungary and from any corporate name that has been reserved for a company (irrespective of the company form). Nor may it have any misleading implications, in particular insofar as it relates to the scope of activities and the form of the company. In addition, the corporate name of a company must clearly differ from any official or colloquial names of any public authority or administrative authority.

The name of a company may not contain the name of any person who played a leading role in the foundation, development or continuation of an authoritarian political regime of the 20th century or an expression or the name of an organization that may be directly associated with an authoritarian political regime of the twentieth century. The names of outstanding historical figures may only be included in a corporate name if this is authorized by the Research Centre for the Humanities.[106]

The corporate name of the Hungarian branch of a foreign corporation, the commercial representative office of a foreign person, and the Hungarian branch of a European Economic Interest Grouping (EEIG) must also indicate the name of the foreign parent company.[107]

If two or more companies bear the same name, the company that first submitted its application for registration or the company whose name has been reserved by the court in a "corporate name reservation procedure" for a period of 60 days will have the right to use that name.

[102] Sole Proprietorship Act, Sec. 30(6).
[103] Sole Proprietorship Act, Sec. 33(2).
[104] Civil Code, Sec. 3:159.
[105] Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings ("CRA Act"), Sec. 3(1).
[106] CRA Act, Sec. 4(5).
[107] CRA Act, Sec. 4(4).

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c. Incorporators

A private LLC may be established by one or more members. The members of a private limited liability company may not be solicited by public invitation.[108] There are no restrictions as to the maximum number, nationality or residence of the members.

d. Articles of Incorporation

The articles of incorporation of a private LLC are called the "deed of foundation" if the company is established by one member or the "articles of association" if the company is established by more than one member.

The articles of incorporation must be signed by all founding members. They may also be signed on behalf of a member by his/her representative as authorized by an authenticated instrument or a private document representing conclusive evidence.

The articles of incorporation must be drawn up in a notarial document or in a private document countersigned by a lawyer or the legal counsel of any of the founders.

The deed of foundation or the articles of association must indicate the following information:[109]

(i) The name of the company;

(ii) The registered office (seat) of the company;

(iii) The main activity of the company;

(iv) The name(s) of the founder(s) of the company, including his/her/their home address(es) or registered office(s);

(v) The capital contributions prescribed and the value of such contributions, as well as how and when these assets are to be made available to the company; and

(vi) The first chief executive officer of the company.

e. Registered Capital

The founder(s) and member(s) of a private LLC are required to provide capital contributions to the company at the time of establishment or when the membership rights are otherwise acquired. Capital contributions made available to the company are not recoverable and equivalent compensation may not be demanded.

The capital contributions required from the members and founders may be provided to the company in the form of cash or contributions in-kind. A founder or member may provide a contribution in-kind by transferring ownership rights over things or rights of pecuniary value to the company. Contributions in-kind may also be provided in the form of receivables, provided they are acknowledged by the debtor or are based on a final court decision. Commitments of members to perform work, or any other personal involvement or service, may not be accepted as a form of capital contribution.

If, at the time of transfer, the value of a contribution in-kind is lower than the value indicated in the articles of incorporation, the company may demand the payment of the difference from the person providing the contribution in-kind within five years from the date of transfer.

If the value of contributions in-kind at the time of formation is equal to or exceeds one-half of the initial capital, the contributions must be made available to the company in full before the date of submission of the application for registration. If the contributions in-kind were not made available to the company in full at the time of foundation, the remaining contributions must be provided by the time specified in the articles of incorporation, but no more than three years from the date of registration.

The capital contribution of the members of a private limited liability company is provided in the form of core deposits. The capital contributions of the members may differ in terms of value; however, the amount of each contribution may not be less than HUF 100,000.[110] The members may have more than one core deposit.[111] The core deposits together comprise the registered capital, which may not be less than HUF three million.[112] If more than one person has agreed to provide a core deposit collectively, their liability for providing that core deposit will be joint and several.

If a member fails to provide his/her contribution as undertaken in the articles of incorporation by the prescribed time limit, the management will require the member to provide the contribution within 30 days, with the applicable consequences indicated. If the member fails to comply within the 30-day time limit, the member's membership will be terminated on the day following the expiration of such time limit. The management must notify the former member of the termination of his or her membership. The former member will be held liable for damages caused to the company by virtue of his or her failure to provide the contribution in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation. Any provision of the articles of incorporation that provides more favorable sanctions than what is prescribed above for failure to provide a capital contribution will be null and void.[113]

f. Incorporation Procedure

The court of registration must be notified of the formation of a company within 30 days from the date on which the articles of incorporation are executed in a notarized document or countersigned by a lawyer.[114]

If the establishment of a company is subject to the approval of any authority, the court of registration must be notified within 15 days of receipt of the final approval.[115]

As of the date on which its articles of association are notarized or countersigned, a company may operate as the precursor company of the company to be established (i.e., as a company under formation). The company under formation may perform business activities only after filing its application for registration with the court of registration. The company's name and short name must contain the indication "*bejegyzés alatt*"

[108] Civil Code, Sec. 3:160.
[109] Civil Code, Sec. 3:5.
[110] Civil Code, Sec. 3:161.
[111] Civil Code, Sec. 3:161(2).
[112] Civil Code, Sec. 3:161(4).
[113] Civil Code, Sec. 3:98.
[114] Civil Code, Sec. 3:100(1).
[115] Civil Code, Sec. 3:100(2).

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("*b.a.*") meaning "under registration" during registration proceedings.

Subject to certain limitations (for example, quotas may not be transferred, a company under formation may not establish a company or join a company as a member, etc.), the same rules apply to companies under formation as to companies registered by the court. The formation period ends upon the registration of the company in the company register and all legal transactions executed during the formation period will be treated as the legal transactions of the company.

A private LLC may also be established by means of a simplified procedure using a standardized form of articles of association drawn up based on a template, as provided by ministerial decree. In this case too, the articles of association must be prepared in a notarized document or countersigned by a lawyer, and derogation from the articles of association is possible only where, and to the extent that, the template makes this possible. In the case of a simplified procedure, the court of registration must register the company within one working day of receipt of the notice from the tax authority regarding the issuance of a tax number for the company to be established. The tax authority must issue the tax number within one working day. However, if the issuance of the tax number is subject to an obstacle specified by law, the tax authority must issue its decision on whether it will issue a tax number within a period of eight business days. If issuance of a tax number is denied, the court of registration must reject the company's application for registration.

A private LLC may also be established as an online founded company, if it is founded by a citizen of an EU Member State or a legal person or other entity registered in an EU Member State. A private LLC may be established online, if the founders have electronic signature capability (e.g., a qualified e-signatory certificate), the founders are identified online by the proceeding attorney, and all documents attached to the application for registration are created electronically. In case of an online founded company, the registered capital must consist exclusively of contribution in cash.[116] The deadlines for the registration of an online founded company are shorter than the deadlines of the standard registration procedure.

In the case of a company established under the standard rather than the simplified or the online procedure, the court of registration must, subject to certain exceptions set out in the CRA Act, resolve whether to approve or reject the application of the company within 15 working days of receipt of the application.

In the case of all procedures, the corporate documentation relating to the establishment of the company is submitted to the court of registration by electronic filing.

g. Costs of Incorporation

The registration procedure of private LLCs is free of any registration fee or court duty.

2. Operation

a. License

A private LLC may engage in any activity that is not expressly prohibited or restricted by law. If the exercise of an economic activity requires a license from an authority, the company may start such activity once it is in possession of the relevant license.

A company may perform an activity that is subject to specific qualifications if a member of the company personally undertaking the activity, or at least one person employed by the company, satisfies such qualification requirements.

b. Amendment of Articles

Amendments to the articles of association, if effected by means other than a contract, require a three-quarters majority approval of the members' meeting.[117] Changes to the company's corporate name, registered office, places of business, and branches, and its activities other than its principal activity, require only simple majority approval.[118]

Any amendment that would harm the rights of some members or make their status more onerous must be decided by the members' meeting unanimously.[119]

Moreover, the provisions regarding the establishment of a company also apply to the amendment of the articles of association; however, the amending document does not need to be signed by each member, unless the amendment is drafted into a contract.

c. Quotas

The capital contributions of the members of an LLC give rise to membership interests or quotas. Quotas come into existence on the company's registration in the corporate register. The quotas held by the members are proportional to their capital contributions. In general, identical membership rights are attached to equivalent business quotas, unless the members assign different rights to specific types of quotas (for example, more favorable dividend or voting rights). A member will be considered a single member with respect to the company even if the member has more than one quota.[120] Any derogation from this rule will be null and void.

Quotas may be owned by more than one person, the persons concerned being treated as a single member from the company's point of view. Such persons can exercise their membership rights through an appointed representative, and bear joint and several liability for the members' obligations.

Quotas may be freely transferred among the members of a company.[121] A transfer to a third party may only take place if the member transferring the quota has paid his or her capital contribution in full, unless the transfer is effected as a consequence of the termination of membership due to the member's failure to provide his/her capital contribution or additional con-

[116] CRA Act, Sec. 9/G.

[117] Civil Code, Sec. 3:102(1).
[118] Civil Code, Sec. 3:102(2).
[119] Civil Code, Sec. 3:102(3).
[120] Civil Code, Sec. 3:164(3).
[121] Civil Code, Sec. 3:166(1).

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tribution, or due to the exclusion of the member.[122] The transfer of quotas must be executed in writing.[123]

Where a member intends to transfer quotas to a third person in exchange for money, the other members, the company or a person appointed by the company have a right of first refusal, in that order, to acquire the quotas being transferred. The right of first refusal may not be transferred to third persons. The members may partially or entirely exclude the right of first refusal in the articles of association.

The articles of association of a company may require the company's consent for the transfer of quotas to third party buyers, which is granted by the members' meeting.

Quotas may be transferred in various ways (for example, by way of purchase and sale, inheritance, or gift). The articles of association cannot validly exclude the transfer of quotas to third party buyers in exchange for money.

d. Alteration of Registered Capital

(1) Capital Increases

(a) Additional Financial Contributions

If each member has provided their respective share of capital contribution in full, the members may decide, by means of a resolution adopted by at least a three-quarters majority, to increase the registered capital through the provision of additional capital contributions.[124]

If the registered capital is to be increased by a financial contribution, the members will have preferential rights to provide the contribution during the 15 days following the date of the decision to increase the capital.[125] If any member fails to exercise the preferential rights within the prescribed time, the rights may be exercised by the other members within an additional 15 days. If all members fail to exercise their preferential rights, the members' meeting must designate other persons upon whom to confer the right to provide the financial contribution.[126] Members are entitled to exercise preferential rights *pro rata* to their capital contributions.[127]

If the entitled parties make commitments in the resolution on the capital increase for the provision of capital contributions in a specific form and in a specific amount, the company is required to amend its articles of association to reflect the increase in capital. The new members participating in the capital increase must issue a statement acknowledging that the articles of association are binding on them.[128]

(b) Capital Increase from Company Surplus Assets

A decision of the members' meeting may be adopted by at least a three-quarters majority to increase the company's capital out of its assets available in excess of its registered capital, if the company's increased registered capital will not exceed the company's own equity reduced by the tied-up reserve and the valuation reserve and, according to the balance sheet in the annual accounts prepared for the previous financial year or the interim balance sheet for the current year, sufficient funds are available for the capital increase. Any increase of the registered capital out of the company's assets in excess of the registered capital increases the capital contributions of members pro rata to their previous contributions.[129]

(2) Capital Reductions

A reduction of capital for purposes of withdrawing equity, consolidating losses, or increasing other capital components requires a decision at the members' meeting adopted by at least a three-quarters majority.[130]

If the reduction of the registered capital is subject to statutory requirements, the members' meeting must adopt a decision within 30 days after learning of the reason for the reduction.

The managing director of the company must convene the members' meeting without delay whenever one of the following situations arise:[131]

(i) The company's own equity has decreased to half of the registered capital due to losses;

(ii) The company's own equity has decreased below the minimum level specified by law;

(iii) The company is threatened by insolvency or has stopped making payments; or

(iv) The company's assets do not cover its debts.

In the above cases, the members are required to adopt decisions, in particular, concerning the subscription of supplementary capital contributions, the securing of registered capital in other ways, or any reduction of the registered capital, or, in the absence of all these, on the company's transformation, merger, division or dissolution without succession. The related resolutions of the members' meeting must be executed within three months.

If the company's own equity is still not more than half of the registered capital after three months following the conclusion of the members' meeting, the company's registered capital must be reduced. Any derogation from the cases in which it is mandatory to convening the members' meeting will be null and void if it prescribes less strict requirements for the company.

The capital contributions of the members must be decreased by the amount of the reduction in the percentage of their existing core deposits.

The managing director of the company must notify the court of registration on the reduction of the registered capital and must disclose the reduction in the Company Gazette on at least two occasions.[132]

The creditors of the company may demand adequate security from the company, except in certain circumstances specified in the Civil Code (for example, where a creditor's claim is already secured consistent with the risk related to the reduction of the capital or the capital reduction is mandatory). The com-

[122] Civil Code, Sec. 3:167(1).
[123] Civil Code, Sec. 3:168(1).
[124] Civil Code, Sec. 3:198(1).
[125] Civil Code, Sec. 3:199(1).
[126] Civil Code, Sec. 3:199(2).
[127] Civil Code, Sec. 3:199(3).
[128] Civil Code, Sec. 3:200.
[129] Civil Code, Sec. 3:201.
[130] Civil Code, Sec. 3:202.
[131] Civil Code, Sec. 3:189.
[132] Civil Code, Sec. 3:203.

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pany must either provide adequate security to the creditors or, if a creditor's claim is refused, must deliver its resolution together with its reasoning to the creditor. The creditor may ask the court to review the company's decision of rejection. The reduction of the registered capital may not be registered by the court until the creditor entitled thereto is provided with adequate security, or until the court decision on the refusal of the creditor's request becomes final.

The company is entitled to adopt a decision on the amendment of its articles of association in accordance with the reduced capital if no creditor's claims have been notified or if the company has satisfied the creditors' request for adequate security. The articles of association may be amended by the resolution on the reduction of capital if the company satisfies the request of eligible creditors for adequate security. Payments can be made to the members as a result of the capital reduction once the reduction is registered.

e. Quota Buybacks

A private limited liability company may acquire its own quotas provided the transfer has been approved at the members' meeting.[133]

A company may purchase its own quotas out of its assets in excess of the registered capital. However, a company may not acquire its own quotas if it is not authorized to pay dividends (see III.B.2.k., below). A company may acquire quotas for which the capital contribution has been provided in full.[134] The amount of capital contributions that are the basis of the company's own quotas may not exceed 50% of the company's registered capital.[135] Any derogation from the above conditions with respect to the acquisition of own quotas will be null and void if it prescribes less strict requirements for the company.

A company may not exercise membership rights in connection with its own quotas; such quotas must be disregarded for purposes of quorum requirements and a company is not entitled to dividends on its own quotas. Any dividend that would be payable for the company's own quotas must be distributed among the members entitled to dividends in proportion to their capital contributions. Within a period of one year following the purchase of its own quotas, the company must: (i) alienate the quotas acquired for consideration; (ii) convey the quotas to its members *pro rata* to their capital contributions for no compensation; or (iii) withdraw the quotas in accordance with the rules on capital reductions.[136] Any provision of the articles of association prescribing less strict requirements for the company in relation to the rights that can be exercised under the own quotas will be null and void.

The decision to withdraw quotas is made at the members' meeting, as a consequence of which the rights and obligations arising out of or in connection with the quotas and the membership of the holder of such quotas must be terminated. Where quotas are withdrawn, the registered capital must be reduced by the amount of the core deposit that is the basis of the withdrawn quotas.

A single member company may not acquire its own quotas.[137]

f. Executive Officers

(1) Managing Directors

The management of a private limited liability company must be carried out by one or more executive officers, who are known as "managing directors." Managing directors perform their management duties representing the company's interests. The first managing directors of a company must be specified in its articles of incorporation.[138] After the company is established, managing directors are appointed and dismissed by the members of the company.

A managing director must be of legal age and must have full legal capacity within the scope required for discharging his or her functions.[139] A managing director that is a legal person must appoint a natural person who will fulfill the managing director's tasks on behalf of the company.[140] The managing director must perform those management tasks personally and not by way of representation and can do so under a service or employment contract.

A managing director must manage a company independently, giving priority to the company's interests, in compliance with the relevant legal regulations, the articles of association and the resolutions of the members' meeting. Except where the company is a single member company, a managing director may not be instructed by the members of the company. The members' meeting may not take over the functions of the managing director(s).

A managing director can be appointed for an indefinite term or for a definite term of no longer than five years and may be recalled from his or her position by the members' meeting at any time. A managing director may resign from his/her position at any time, but if the company's interest so requires, the resignation may take effect only on the appointment of a new managing director, or failing this, on the 60th day after the announcement of the resignation.[141]

An individual is not eligible to be an executive officer of a company if he or she has been:[142]

(i) Sentenced to imprisonment by final verdict for the commission of a crime until he or she is relieved from the detrimental consequences of having a criminal record;

(ii) Prohibited by final court order from practicing a profession that is carried on by the company; or

(iii) Prohibited from holding an executive office, within the time limit specified in the prohibition order.

In addition to the above, if the executive officer has significant tax debts or was formerly an executive officer of a company that failed to settle significant tax debts, or if the tax number of the company the executive officer previously represent-

[133] Civil Code, Sec. 3:174.
[134] Civil Code, Sec. 3:174(3).
[135] Civil Code, Sec. 3:174(4).
[136] Civil Code, Sec. 3:175.
[137] Civil Code, Sec. 3:209(2).
[138] Civil Code, Sec. 3:21(3).
[139] Civil Code, Sec. 3:22(1).
[140] Civil Code, Sec. 3:22(2).
[141] Civil Code, Sec. 3:25.
[142] Civil Code, Sec. 3:22(4)–(6).

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ed was deleted by the tax authorities, this may also constitute grounds for exclusion.

(2) Liability

An executive officer will be held liable for damages caused to the company that result from the officer's management activities in accordance with the provisions on liability for damages caused by breach of contract. Under these rules, an executive officer is released from liability if it can be proven that the breach of contract was caused by circumstances that were beyond the individual's control and unforeseeable at the time the contract was concluded, and that it could not reasonably have been expected to avoid the circumstances or prevent the damages. The company will be held liable for damages caused to third parties by the executive officers acting in such capacity. The executive officer will bear joint and several liability with the company, if the damages were caused intentionally.[143]

At the request of an executive officer, the members' meeting of the company may provide a release from liability at the time that it accepts the annual financial statements, thus acknowledging the executive officer's management activities during the previous financial year. In these circumstances, the company may establish a claim for indemnification from the negligence of the executive officer only if the facts or data serving as the basis for the release of liability were untrue or incomplete.

If a company is terminated without legal succession, its creditors may enforce a claim for indemnification up to the value of their unsettled claims against the company's executive officers, based on the rules of tort liability, if the executive officers did not consider the creditor's interests after the emergence of the situation threatening the company with insolvency. This provision does not apply if the company is terminated by way of a voluntary dissolution procedure, in which the claims of all creditors are settled by the company.[144]

(3) Company Managers and Other Representatives

The supreme body (i.e., the members' meeting) of a private LLC may appoint one or more employees of the company as company managers to assist the managing directors in their work. The members' meeting may even grant company managers a general power of representation.[145] The company managers must manage the continuous operation of the company based on instructions from the managing director(s).[146]

The management may also grant other employees the right to represent the company in specific matters as described in a written declaration of the management. The general practice is that such right of representation is exercised by such an employee jointly with another representative of the company, but it is possible for a company to deviate from this rule.

(4) Representation

The power of representation means the authority to represent a company in writing, by signing in its name and on its behalf. The mode of representation and the method of signing for the company must be identical.

The power of representation may be exercised either individually or jointly. A representative may have either an individual or a joint right of representation: the same person may not represent a company individually and jointly. Both individual and joint powers of representation may be restricted; such restrictions, however, may not be applied vis-à-vis third parties.

A private LLC is represented by its managing directors, company managers, and other employees duly authorized in writing. A company manager or another employee entitled to represent a company may not validly assign this right of representation to another person.[147]

g. Members' Meetings

The supreme body is the decision-making organ of the members of a company.[148] The supreme body of a private LLC is the members' meeting.

The principal duty of the supreme body is to adopt decisions on basic business and personnel issues. The responsibilities of the supreme body must include the approval of the annual financial report and the making of decisions as to the distribution of profits.[149] Decisions on the enforcement of claims for damages against the company's members, executive officers or supervisory board members or against the company's auditor lies with the company's supreme body. In the case of a single-member company, the sole member functions as the supreme body.[150]

As a general rule, the managing director of a company convenes the members' meeting at the company's seat. Each member of the company has the right to participate in the activity of the supreme body either personally or by proxy.[151] Members may also exercise their rights in the meetings of the supreme body by means of electronic communication instead of attending in person, if the articles of association include the basic rules for such a procedure.[152] The articles of association may allow the passing of decisions without a members' meeting having to be held. Where this is the case, the decision-making procedure is initiated by the management of the company sending draft decisions to the members, who must then send their votes to the management.

As a general rule, the voting right of a member in the members' meeting is consistent with his or her capital contribution, but derogation from this is possible under the Civil Code rules. The members' meeting has a quorum if members representing more than one-half of the votes are present, but derogation is possible in this respect as well. If the members' meeting does not have a quorum, the reconvened members' meeting must have a quorum for the issues of the original agenda irrespective of the voting rights represented by those present, if the reconvened meeting is called for not less than three and not more than 15 days after the original meeting.

[143] Civil Code, Sec. 3:24(2).
[144] Civil Code, Sec. 3:118.
[145] Civil Code, Sec. 3:116(2).
[146] Civil Code, Sec. 3:113(1).
[147] Civil Code, Sec. 3:116(3).
[148] Civil Code, Sec. 3:109(1).
[149] Civil Code, Sec. 3:109(2).
[150] Civil Code, Sec. 3:109(4).
[151] Civil Code, Sec. 3:110(1).
[152] Civil Code, Sec. 3:111(2).

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The managing director must arrange for the drafting of minutes of the members' meeting, unless the meeting is held by means of electronic communication.[153] The managing director must enter all resolutions adopted by the members in the book of resolutions.[154]

h. Supervisory Board

The members or founders of a company may appoint a supervisory board in the articles of association to exercise control over the management in order to protect the interests of the company.[155] Generally, a supervisory board has three members.

The establishment of a supervisory board can be either optional or mandatory. A supervisory board must be established if the annual average number of full-time employees of the company exceeds 200, and the worker's council did not waive the right to have a representative of the employees participate in the supervisory board.[156] In this case, one-third of the supervisory board is made up of representatives of the employees.

The members of the supervisory board must take part in the work of the supervisory board in person. Supervisory board members must be independent of the management of the company and are not bound by any instructions in performing their duties.[157]

The members of the first supervisory board must be included in the articles of association, while subsequent members are appointed by the members' meeting. Membership in the supervisory board takes effect when accepted by the person appointed.[158]

Where a company has a supervisory board, the members' meeting may vote on the financial report once they have received a written report from the supervisory board.[159]

If, in the opinion of the supervisory board, the activity of the management is contrary to the law, the articles of association or the resolutions of the supreme body of the company, or otherwise infringes the interests of the company, the supervisory board has the right to convene the meeting of the supreme body to discuss this issue and to make the necessary decisions.[160]

i. Books and Records

The financial reports of companies (including private LLCs, corporations and partnerships) must be drawn up and books kept in compliance with the basic principles defined in Act C of 2000 on Accounting (the "Accounting Act"). The Hungarian accounting regulations are generally in line with international accounting principles. A private limited liability company may elect to prepare its accounts in accordance with either Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS). A company is required to retain in legible form for a period of at least eight years: (i) the annual accounts for the financial year; (ii) the annual report; (iii) the inventory, valuation, and general ledger statements where double entry books are kept (trial balance) or a general ledger where single entry books are kept (for example, by a condominium or a foundation with income up to a certain limit); and (iv) other registers maintained in compliance with the requirements of the Accounting Act in support of the annual accounts.[161]

j. Financial Statements

Under the Accounting Act, companies (including private limited liability companies, corporations and partnerships) are required to prepare annual financial accounts, including a balance sheet, a profit and loss account, and notes on the accounts.

The basic period for financial accounts is the business year, which, in most cases, coincides with the calendar year. However, the business year may differ from the calendar year in certain cases defined by law.

k. Dividends and Other Profit Distributions

Members are entitled to receive a share of the company's own funds that is available for distribution to the benefit of members and has been ordered to be distributed at the members' meeting, in general pro rata to their capital contributions ("dividend").[162] However, departures from this rule are provided for. A member who has provided only a part of his/her capital contribution is entitled to receive dividends but only in proportion to the part of the capital contribution he or she has already paid to the company.

The members' meeting must decide on the payment of dividends at the same time as it approves the financial report. The members' meeting may adopt a decision to pay interim dividends between the approval of two consecutive financial reports if the company meets the financial requirements laid down by the Civil Code.[163] However, if according to the annual accounts prepared after the distribution of interim dividends, there was no justification for the distribution, the dividends must be returned by the members.

If, under the articles of association, a member is not required to provide the total amount of his/her respective cash contribution before the registration of the company, the member may provide his/her cash contribution entirely or in part from the profit to be distributed according to the provisions on the payment of dividends. In this case the amount of the unpaid core deposit must be settled out of the dividend and the company may not pay any dividend to the respective member until the combined amount of the unpaid profit (calculated in relation to the member's core deposit) and the cash contribution paid up by the respective member reaches the total amount of the member's cash contribution.[164]

A member who has not provided a cash contribution in full by the end of the second full business year, which consists of 12 months starting from the date of registration, is required to provide the unpaid portion within three months after the acceptance of the financial report concerning the second year of busi-

[153] Civil Code, Sec. 3:193(1).
[154] Civil Code, Sec. 3:194.
[155] Civil Code, Sec. 3:26.
[156] Civil Code, Sec. 3:119.
[157] Civil Code, Sec. 3:26(3).
[158] Civil Code, Sec. 3:26(4).
[159] Civil Code, Sec. 3:120(2).
[160] Civil Code, Sec. 3:120(3).
[161] Act C of 2000 on Accounting ("Accounting Act"), Sec. 169.
[162] Civil Code, Sec. 3:185(1).
[163] Civil Code, Sec. 3:186.
[164] Civil Code, Sec. 3:162(1).

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ness. Any provision on this point in the articles of association providing more favorable treatment to the members will be null and void.

The members are liable for the debts of the company up to the amount of any unpaid cash contributions.[165]

l. Reserves

Capital and valuation reserves may be set up, and profit and tied-up reserves must be set up in certain circumstances prescribed by the Accounting Act. The reserves are parts of the company's own equity. In addition, a company's own equity consists of the subscribed capital (decreased by any amount not yet paid up) and the results after tax (i.e., profit or loss) for the current year.[166] Provisions are indicated separately in the balance sheet. Both own equity and provisions are shown under liabilities in the balance sheet.

The capital reserve must be increased by the following items:

(i) In the case of a limited company (a corporation), the difference between the face value and the issue price of the shares, including the price on any capital increase (subscription price);

(ii) In the case of a company other than a corporation, the assets (financial and other) permanently contributed by the owners on foundation, as part of the foundation, or on an increase in capital placed in the capital reserve (as the difference between the subscription price and the face value) as part of a capital increase;

(iii) A reduction of the subscribed capital against the capital reserve;

(iv) Assets resulting from the withdrawal of cooperative shares that cannot be divided;

(v) The amount transferred back from the tied-up reserve when that reserve is released; and

(vi) The value of liquid and other assets transferred to the capital reserve in accordance with the law, simultaneously with the realization of the cash or asset.

The capital reserve must be decreased by the following items:

(i) An increase in the subscribed capital from the available capital reserve;

(ii) The amount used to offset any deficit;

(iii) The amount withdrawn from the capital reserve to decrease the subscribed capital through disinvestment, in proportion to the reduction of the subscribed capital;

(iv) The amount transferred from the capital reserve to the tied-up reserve; and

(v) The value of liquid and other assets transferred from the capital reserve in accordance with the law, simultaneously with the realization of the cash or asset transfer.[167]

The profit reserve must be increased by the following items:

(i) The after-tax results (profit) for the previous financial year, including any increase in the after-tax profits of previous financial year(s) as a result of an audit;

(ii) A reduction of the subscribed capital against the profit reserve;

(iii) The capital reserve used to offset any deficit, as well as the tied-up reserve;

(iv) For the owner (shareholder) of the enterprise, the amount returned from any supplementary payment previously provided but not required to cover losses at the time of the financial transaction or asset transfer;

(v) The amount that was originally in the profit reserve and that was returned there from the tied-up reserve;

(vi) Liquid assets and the value of other assets placed into the profit reserve in accordance with the law, at the time of the transaction or transfer;

(vii) Supplementary payment against the tied-up reserve, if the owner (shareholder) of the enterprise waives claim to such supplementary payment, with effect from the date of waiver; and

(viii) The amount remitted of the liability stemming from the distribution of dividends if the owner (member) of the enterprise cancels claim to the declared dividend, with effect from the date of cancellation.

The profit reserve must be decreased by the following items:

(i) The after-tax results (loss) for the previous financial year, including any decrease in the after-tax results of the previous financial year(s) (loss) as a result of an audit;

(ii) An increase in the subscribed capital from the available profit reserve;

(iii) The amount transferred from the profit reserve to the tied-up reserve;

(iv) Any dividends, profit-sharing, or yield on interest-bearing shares (including applicable taxes);

(v) For the owner (shareholder) of the entrepreneur, the supplementary payment provided to cover the losses of the entrepreneur, as required by law, at the time of the financial transaction or asset transfer;

(vi) The amount withdrawn from the profit reserve to reduce the subscribed capital through disinvestment, in proportion to the reduction in the subscribed capital;

(vii) Liquid assets and the value of other assets transferred from the profit reserve in accordance with the law, at the time of the transaction or transfer (including the company's total assets existing as of the termination date that are due on termination of a membership in the company, in excess of the proportional amount of subscribed capital, capital reserve and profit reserve); and

[165] Civil Code, Sec. 3:162.
[166] Accounting Act, Sec. 35(2).
[167] Accounting Act, Sec. 36.

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(viii) The sum intended for cash contribution to the registered capital of a company.[168]

The tied-up reserve consists of sums tied up from the capital reserve and/or from the profit reserve in the circumstances specified in the Accounting Act as well as supplementary payments received by the company for covering losses until repaid.[169]

The valuation reserve consists of adjustments to assets based on their market value, as well as changes to equity based on fair value under the Accounting Act.[170]

Provisions must be created out of pre-tax profits — to the extent necessary to cover payment liabilities towards third persons originating from past and current transactions and contracts (including, in particular, guarantee commitments prescribed by the law, contingent liabilities, payment obligations relating to care before retirement and severance pay, obligations relating to the protection of the environment, and losses expected from a contract concluded or from the unit of account thereof) that, on the balance sheet date, are assumed or sure to be incurred in the future, but the amounts or due dates of which are uncertain, and for which the company has not provided the necessary funds in any other way.

Provisions may be created out of pre-tax profits — to the extent necessary to establish the actual profit or loss — to cover contingent, major and recurring liabilities (in particular, maintenance costs, restructuring costs and payments relating to environmental protection obligations) that, on the balance sheet date, are assumed or sure to be incurred in the future, though the amounts or due dates of which are uncertain, and that cannot be shown under accrued expenses and deferred income.[171]

m. Statutory Auditor

The supreme body of a company (i.e., the members' meeting in the case of a private limited liability company) may appoint a statutory auditor for a fixed term of not more than five years.[172] The auditor is responsible for carrying out the audit of accounting documents and providing an independent auditor's report as to whether the annual report of the company is in conformity with legal requirements, and whether it provides a true and fair view of the company's assets and liabilities, financial position and profit or loss.

The statutory auditor may be an individual auditor or an audit firm recorded in the register of auditors. If the auditing services are provided by an audit firm, the firm will be required to designate the person who will be personally responsible for carrying out the audit.[173] A member, executive officer or supervisory board member of a company, or a family member of such a person may not act as an auditor of the company concerned. An employee of a company may not act as an auditor during his/her period of employment or for a period of three years thereafter.[174]

The Accounting Act specifies the circumstances in which a company is not required to appoint a statutory auditor, although even in such circumstances an auditor may be appointed.

The first auditor must be included in the articles of incorporation of the company. Subsequent auditors are appointed by the members' meeting.[175] The members' meeting is entitled to define the basic content of the contract (conditions and remuneration) to be executed with the auditor.

In the event the statutory auditor: (i) detects any changes in the company's assets that are likely to endanger its ability to satisfy any claims filed against the company, or (ii) learns of any circumstance in which the professional activities of an executive officer or a supervisory board member could be a liability to the company, the statutory auditor must ask the management to take immediate action to rectify the situation and work with the members of the company to do so. In the event of noncompliance with the auditor's request, the court of registration must be informed of the situation.[176]

The statutory auditor may not provide services to the company or cooperate with the management in a manner that could endanger the impartiality and objectivity of the audit.[177]

3. Statutory Mergers

A legal entity may combine with other legal entities by way of a merger or statutory merger (i.e., merger by acquisition according to the terminology of the Civil Code). In the case of a merger, the merging legal entities are terminated and a new legal entity is established with general legal succession. In the case of a statutory merger, the merging legal entity is terminated and all its assets and liabilities are transferred to the surviving legal entity.[178]

A statutory merger is not possible, if:

(i) Any company intending to participate is in the process of dissolution without succession or bankruptcy proceedings;

(ii) Any company intending to participate is indicted in criminal proceedings carrying possible criminal sanctions or is subject to any criminal sanction; or

(iii) The members of any company intending to participate have failed to provide their capital contributions as prescribed in the articles of association of the company concerned.[179]

The decision on a statutory merger is made by the members of the legal entities participating in the merger. A separate decision is required in the case of each participating legal entity. Once such a decision is made, the management of the legal entities must prepare a statutory merger plan including the draft statements of assets and liabilities of all participating legal entities as well as the opening draft statements of assets and liabilities of the surviving legal entity.[180]

[168] Accounting Act, Sec. 37.
[169] Accounting Act, Sec. 38(1).
[170] Accounting Act, Sec. 39.
[171] Accounting Act, Sec. 41.
[172] Civil Code, Sec. 3:130(2).
[173] Civil Code, Sec. 3:129(2).
[174] Civil Code, Sec. 3:129(3).
[175] Civil Code, Sec. 3:130(1).
[176] Civil Code, Sec. 3:38(2).
[177] Civil Code, Sec. 3:131(1).
[178] Civil Code, Sec. 3:44(1).
[179] Civil Code, Sec. 3:40.
[180] Civil Code, Sec. 3:44.

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The legal entities potentially participating in a statutory merger must decide individually whether to adopt the statutory merger plan. The merger plan is considered adopted if it is approved by all the legal entities participating in the statutory merger.

The members of a legal entity are entitled to declare that they do not wish to retain their membership in the surviving legal entity within 30 days of receiving the statutory merger plan. The membership of such members terminates on the date of the statutory merger. The terminated members will be entitled to the same share of the assets of the merging legal entity as they would have been entitled to, had the legal entity been dissolved without succession. The share of assets due to such members must be disbursed within a period of 60 days after the registration of the merger, unless an agreement concluded by the surviving legal entity and the leaving members provides otherwise.[181] The merger plan must be amended to reflect any statement made by members regarding their intention not to participate in the statutory merger.

The members approve the statutory merger by adopting the merger plan. The decision-making body of each legal entity must pass this resolution by at least a three-quarters majority. Following the adoption of the merger plan, the company must publicize the statutory merger in the Company Gazette on two occasions. Any creditor whose claim originates prior to the first publication may demand adequate security from the legal entity within a 30-day period following the second publication if the statutory merger endangers the satisfaction of its claim.

On the registration of a statutory merger, the legal person(s) terminated must be deleted from the corporate registry. If the court of registration refuses to register the statutory merger, the legal entities continue to operate in their previous form.[182]

4. Dissolutions

See III.H.2., below.

5. Liquidations

See III.H.3., below.

C. Limited Companies (Joint-Stock Corporations)

A limited company (*részvénytársaság*) or company limited by shares (a "corporation") is a business association founded with a share capital consisting of shares of a pre-determined number and nominal value, where the obligations of shareholders of the corporation are limited to providing funds covering the nominal value or the accounting par value of the shares. Unless otherwise provided for in the Civil Code, shareholders may not be held liable for the corporation's obligations beyond their capital contributions.[183]

There are two types of corporations:

(i) A public limited company (*nyrt*) (publicly held corporation), i.e., a limited company whose shares are listed on a stock exchange; and

(ii) A private limited company (*zrt*) (privately held corporation), i.e., a limited company whose shares are not listed on any stock exchange.

Note: The previous Company Act did not require public corporations to be listed on the stock exchange. There were, therefore, public corporations established under the former Company Act, whose shares were not listed. These companies had until March 15, 2016 to list their shares on a stock exchange, or to adopt a resolution on changing their form of operation or on their transformation.

1. Formation

a. Purpose Clause

The articles of incorporation of a limited company must expressly indicate the founders' intention to set up the limited company.

A corporation can be established for a fixed or an indefinite period of time. If a corporation's articles of incorporation do not provide for a fixed term, the corporation is established for an indefinite period.

b. Corporate Name

The name of a limited company must contain the selected company form (public or private limited company — *nyrt* or *zrt*). The regulations and requirements regarding the corporate name of a private limited liability company (see III.B.1.b., above) apply *mutatis mutandis* in the case of a corporation.

The corporate form of a limited company can be changed by a decision of the general meeting adopted by at least a three-quarters majority.

c. Incorporators

A corporation may be established by one or more shareholders, including individuals and entities. A corporation is initially established only as a private corporation (*zrt*) and remains private if its shares are not listed on a stock exchange. A private limited company may change its form to a public limited company (*nyrt*) by listing its shares on a public exchange. Thus, a public corporation cannot be formed from the outset. Furthermore, shareholders and capital may not be solicited for the foundation of a limited company by way of public invitation.[184]

There are no restrictions as to the maximum number, nationality or residence of the shareholders of a corporation.

d. Articles of Incorporation

The articles of incorporation of a limited company are called statutes. The minimum content and requirements for the articles of incorporation for a private limited company are the same as for those of a private limited liability company (see III.B.1.d., above). However, the Civil Code prescribes certain additional requirements for the statutes of a corporation.[185]

[181] Civil Code, Sec. 3:134.
[182] Civil Code, Sec. 3:43.
[183] Civil Code, Sec. 3:210.
[184] Civil Code, Sec. 3:249.
[185] Civil Code, Sec. 3:250.

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e. Share Capital

The share capital of a limited company consists of the total nominal value of its shares.[186] The share capital of a private limited company may not be less than HUF five million. The share capital of a public limited company may not be less than HUF 20 million.[187] The cash contributions made at the time of foundation may not amount to less than 30% of the share capital.[188]

The regulations and requirements regarding the obligation of the founders to provide capital contributions, the forms of capital contribution, the value of the contribution in kind, and the consequences of failing to provide capital contributions applicable in case of private limited liability companies (see III.B.1.e., above) apply *mutatis mutandis* in the case of corporations.

f. Incorporation Procedure

The provisions regarding the incorporation procedure of private limited liability companies (see B.1.f., above) apply also in the case of corporations.

g. Costs of Incorporation

In the case of an ordinary registration procedure, the amount of the registration fee (court duty) is HUF 100,000 and the fee of the publication of the registration of the company in the Company Gazette is HUF 5,000.

In the case of a simplified registration procedure, the amount of the registration fee (court duty) is HUF 50,000; the procedure is not subject to a publication fee.

2. Operation

a. Shares

Shares are equity securities representing membership rights in the issuing limited company. Shares in a limited company are registered, have a nominal value and are tradable. One share may have several owners, who must be treated as a single shareholder with respect to the limited company. Their rights may only be exercised by their common representative and they bear joint and several liability for shareholder obligations.[189]

The shares of private corporations may be either printed on paper or registered as dematerialized shares; printed share certificates may be converted and recorded as dematerialized shares, and vice versa. The shares of public corporations may be issued in the form of dematerialized shares.[190] In the case of dematerialized shares, the data representing the shares are recorded on a securities account. Shareholders may exercise their rights if they are in possession of the shares or based on a deposit or ownership certificate after recording in the share register.

Corporations may issue the following types of shares:[191]

(i) Ordinary shares;

(ii) Preference shares;

(iii) Employees' shares;

(iv) Interest-bearing shares; or

(v) Redeemable shares.

The statutes may define classes of preference shares based on the rights they confer, as follows:[192]

(i) Preference as to dividends;

(ii) Priority in relation to a share in the assets to be distributed on the dissolution of a limited company without succession;

(iii) Preference as to voting rights;

(iv) Priority in relation to the appointment of executive officers or supervisory board members;

(v) The right of preemption (in the case of a private corporation); and

(vi) Any combination of the above preferential rights.

A limited company may issue different types or classes of shares, other than those mentioned above, if the statutes specify the content and extent of membership rights attached to the shares to be issued.[193]

b. Acquisition of Own Shares

Corporations are entitled to acquire their own shares up to 25% of share capital,[194] except during formation or when increasing the share capital. Shares whose nominal value or accounting par value is not paid up or made available in full may not be acquired as own shares. A limited company may acquire its own shares for consideration if the conditions for the payment of dividends are satisfied. The company may pay for its own shares from the assets available for payment as dividends.

Own shares do not entitle the limited company to exercise shareholders' rights. Any dividends paid out by a limited company on the own shares must be paid to the shareholders entitled to dividends pro rata to the nominal value of their shares.[195]

A single member limited company may not acquire its own shares.[196]

c. Alterations of Share Capital

(1) Increase of Share Capital

The general meeting may vote to increase a limited company's share capital or may authorize the management board to do so.

A limited company may adopt a decision for the conditional increase of its share capital through the issue of convertible or equity bonds. At the bond holder's request, convertible bonds are exchanged for shares on the terms specified in the statutes. Equity bonds must be converted into shares on

[186] Civil Code, Sec. 3:212(1).
[187] Civil Code, Sec. 3:212(2).
[188] Civil Code, Sec. 3:212(3).
[189] Civil Code, Sec. 3:213.
[190] Civil Code, Sec. 3:214.
[191] Civil Code, Sec. 3:228.
[192] Civil Code, Sec. 3:230.
[193] Civil Code, Sec. 3:240.
[194] Civil Code, Sec. 3:222.
[195] Civil Code, Sec. 3:225.
[196] Civil Code, Sec. 3:323.

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the subsequent occurrence of certain conditions specified in the bonds.[197]

A limited company may increase its share capital by issuing new shares, from assets not forming part of share capital, by issuing employees' shares or by converting convertible bonds into shares. Different methods may be decided on and implemented at the same time.

(2) Reduction of Share Capital

A limited company may decide to reduce its share capital; however, in certain cases defined in the Civil Code, such reduction is mandatory. As a general rule, a company's share capital may not be reduced below the minimum amount as defined by the Civil Code (see 1.e., above).

Where the share capital is reduced, own shares held by a limited company must be withdrawn first. The reduction must be implemented by reducing either the quantity or nominal value of shares, or by using these two methods jointly.[198]

Payments may be made to shareholders only after the registration of the reduction of share capital, and cash or in-kind contributions related to shares that have not yet been provided to the company may also be cancelled only after the registration of the reduction.

d. Executive Officers

A corporation is managed by its management board. The management board consists of at least three natural persons and elects its chairman from among its members. The management board exercises its rights and performs its duties as an independent body. Any restriction or division of the power of representation vested upon a member of the management board or rendering such member's actions conditional or subject to approval is not effective against third parties.[199]

In the case of a private corporation, the statutes may provide that the Chief Executive Officer exercises the powers of the management board.

The statutes of a public limited company may provide that the company is controlled by a board of directors under a one-tier system instead of a management board and a supervisory board. In this case, the board of directors is responsible for performing the tasks of both the management board and the supervisory board.[200] In any case, the board of directors must consist of at least five natural persons. As a general rule, the majority of the board of directors must be independent.

e. General Meeting

The supreme body of a limited company is the general meeting of shareholders. The Civil Code does not provide a comprehensive summary of the competence of the general meeting, although certain exclusive rights can be found in the Civil Code (for example, in the case of a public corporation, the general meeting has the exclusive right to put the remuneration policy to an advisory vote).[201] Shareholders have the right to participate, to request information, and to make remarks and proposals at the general meeting. Shareholders holding shares with voting rights are entitled to vote.[202]

In the case of a private corporation, the general meeting must be called by means of an invitation sent to the shareholders at least 15 days prior to the first day of the general meeting.[203] In the case of a public corporation, the invitation to the general meeting must be posted on the corporation's website at least 30 days prior to the first day of the general meeting.[204]

General meetings may also be held by way of electronic communications equipment instead of in person. If the statutes of a limited company so provide, the shareholders may freely decide the way in which they wish to participate.

f. Supervisory Board

The provisions discussed in III.B.2.h., above, relating to the supervisory board of a private limited liability company also apply to the supervisory board of a limited company. In addition to the general cases in which a supervisory board must be established, the Civil Code requires a corporation to establish a supervisory board in certain additional cases (for example, in the case of a private corporation, if this is requested by a group of shareholders together controlling at least 5% of the voting rights).[205]

A public corporation is required to set up an audit committee, which provides assistance to the supervisory board or to the board of directors in supervising the financial reporting system, and in selecting and cooperating with an auditor. The general meeting must elect the audit committee from among the independent members of the supervisory board or the board of directors. At least one member of the audit committee must have competence in accounting or auditing.[206]

g. Statutory Auditor

As a general rule, every corporation must employ an auditor.[207] A public corporation may not depart from this requirement.

h. Dividends and Other Profit Distributions

The shareholders of a limited company are entitled to receive a share of the taxed profits of the company that are available and have been ordered for distribution by the general meeting, as a general rule, pro rata to the nominal value of their shares. Dividends must be paid to the shareholders listed in the register of shareholders when the general meeting adopting the decision for the payment of dividends is held. Shareholders that have provided partial payment on their capital contributions are entitled to receive dividends, but only based on the capital contributions they have already paid to the company. In connection with the application of these rules, the statutes may stipulate specific rights or restrictions separately for each class of shares.[208]

[197] Civil Code, Sec. 3:303.
[198] Civil Code, Sec. 3:310.
[199] Civil Code, Sec. 3:282.
[200] Civil Code, Sec. 3:285.
[201] Civil Code, Sec. 3:268.
[202] Civil Code, Sec. 3:257.
[203] Civil Code, Sec. 3:271.
[204] Civil Code, Sec. 3:272.
[205] Civil Code, Sec. 3:290.
[206] Civil Code, Sec. 3:291.
[207] Civil Code, Sec. 3:292.
[208] Civil Code, Sec. 3:262.

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The general meeting or, if so authorized by the statutes, the management board, may adopt a decision to pay interim dividends between the approval of two consecutive financial reports if the company meets the financial requirements defined by the Civil Code. If, according to the annual accounts prepared after the distribution of interim dividends, there was no justification for the payment of such dividends, the distribution must be returned by the shareholders when so requested by the company.

D. Partnerships

A partnership can be established in the form of either a general partnership or a limited partnership.

In the case of a general partnership (*közkereseti társaság* or *kkt.*), the members of the partnership undertake joint and several liability for the partnership's obligations not covered by the assets of the partnership.[209]

When executing the memorandum of association for the establishment of a limited partnership (*betéti társaság* or *bt.*), the members of the partnership agree to make available to the partnership the capital contribution necessary for its activities, and that at least one of the partners (a "general partner") should undertake joint and several liability together with any other general partners for the partnership's obligations not covered by the assets of the partnership, while at least one other partner (a "limited partner") is not liable for the obligations of the partnership (beyond his or her capital contribution), unless the Civil Code provides otherwise.[210]

1. General Partnerships

a. Formation

When executing the memorandum of association for the establishment of a general partnership, the members of the partnership agree to make available to the partnership the capital contribution necessary for its activities, and to undertake joint and several liability for the partnership's obligations not covered by the assets of the partnership. The supreme body of a general partnership is the members' meeting. Any matters normally decided by or under the jurisdiction of the members' meeting may be adopted without a formal meeting being held. As a general rule, resolutions are adopted by a simple majority of all eligible votes. Certain resolutions, such as the removal of executive officers, are adopted by a majority of at least three-quarters and others, such as the amendment of the memorandum of association, and the transformation, merger, demerger or termination of the partnership, require the unanimous vote of all members.

b. Administration

The management of a general partnership is conducted by one or more managing directors delegated or elected from among the members. If no managing director is delegated or elected, all members must function as such. Only the members of a general partnership can be appointed as managing directors.

Any member of a partnership may transfer an ownership share in the partnership, or a part thereof, to either another member or a third party. The contract for the transfer must be executed in writing and takes effect upon the amendment of the articles of association in accordance with the terms of the transfer.

c. Reduction to Single Member Status

If only one partner remains in the general partnership, the partnership must apply for the registration of a new member at the court of registration within six months or the partnership will dissolve without succession.

2. Limited Partnerships

Special rules apply in the case of limited partnerships. When executing the memorandum of association for the establishment of a limited partnership, the members of the partnership agree to make available to the partnership the capital contribution necessary for its activities, and at least one of the partners (a "general partner") undertakes joint and several liability together with any other general partners for the partnership's obligations not covered by the assets of the partnership, while at least one other partner (a "limited partner") is not personally liable for the obligations of the partnership, unless the Civil Code provides otherwise.

Under a general rule of the Civil Code, the provisions on general partnerships also apply to limited partnerships subject to the exceptions set out in the Civil Code. The most significant exception concerns the termination of membership of all general partners or all limited partners: if the membership of all general partners or all limited partners ceases to exist, the partnership must notify the court of registration within a period of six months that it has reestablished the conditions for functioning as a limited partnership, or that it has been converted into a general partnership or must resolve the transformation, the merger or the dissolution of the limited partnership without succession. In addition, the general cases of dissolution of a company without succession (see III.H., below) also apply in the case of a limited partnership.

E. Branch of a Foreign Corporation

A branch (*fióktelep*) of a foreign company is an organizational unit of a foreign company without legal personality, but with the financial autonomy and legal capacity to conduct business under the foreign company's name in Hungary. A branch is registered as a separate organizational unit of a company in the Hungarian company registration records. A foreign company is defined as a legal person or organization that conducts entrepreneurial activities as its principal activity and whose registered office is located outside Hungary.

1. Registration and Operation

A foreign company may conduct business in Hungary by opening a branch office. Such a branch office is a separate organizational unit of the foreign company. The branch of a foreign company is registered by the Hungarian court of registration. Branches are governed by Act CXXXII of 1997 on Hun-

[209] Civil Code, Sec. 3:138.
[210] Civil Code, Sec. 3:154.

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garian Branch Offices and Commercial Representative Offices of Foreign-Registered Companies (the "Branch Act").[211]

A foreign company is entitled to carry on business activities in Hungary through a branch office in Hungary that represents the company *vis-à-vis* the authorities and third parties in connection with its activities.[212] A branch may acquire rights for the benefit of, and assume liabilities against, the foreign company under its own name. It may also, among other things, acquire property, conclude contracts, and sue and be sued by third parties in court.[213]

A branch is considered established on being entered in the company register and may commence business activities following such registration.[214]

A branch office may be represented by persons employed at, or assigned to, the branch office or persons with a long-term service contract and a domestic place of residence.[215] The representatives of a branch and their close relatives may only conclude transactions within the scope of the activities of the branch if permitted to do so under the deed of formation of the branch or by the prior written consent of the foreign company concerned. The foreign company's written permission is also needed if the branch representative intends to acquire shares in another business association conducting the same business activities as the branch, excluding the buying of shares in a public corporation.[216] The employees of a branch are in an employment relationship with the foreign company concerned and employer's rights are exercised by the foreign company through its branch office.[217]

The foreign company must continuously provide the assets necessary for the operation of a branch and for the settlement of its debts.

No permit is required for a business association registered in an EEA country to purchase real estate required for the business operations of its Hungarian branch office. In all other cases a permit is required, unless otherwise specified by an international agreement or reciprocity exists between the foreign country and Hungary in this regard.[218]

2. *Liability*

A foreign company and its branch are subject to unlimited joint and several liability for the debts of the branch office.[219] As regards the execution of liabilities incurred in connection with the activities of a branch, all assets of the foreign company located in Hungary may be subject to such execution. The Hungarian courts have jurisdiction in legal disputes against both the branch and the foreign company. Enforcement procedures may also be initiated directly against the branch office, or creditors can enforce their claims even in a liquidation procedure initiated against the foreign company. Insolvency proceedings initiated against the foreign company abroad may only apply to the Hungarian branch under a reciprocity arrangement, or in accordance with Regulation (EU)2015/848/EC of the European Parliament and of the Council of May 20, 2015, on insolvency proceedings.[220]

A branch is terminated by being deleted from the company register. As a general rule, a branch can be deleted from the company register if it is free from public debts, an announcement about the termination has been published in the Company Gazette, and it has been verified that there are no administrative or court proceedings in progress against the foreign company in Hungary with regard to its activities conducted through the branch. However, if the country in which the foreign company is registered and Hungary have signed an international agreement on court jurisdiction, the execution of court decisions, and the collection of public debts in civil and commercial matters, or if these matters are regulated under EU legislation, the above conditions are not required for the termination of a branch. However, on requesting that it be deleted from the company register, the branch must prove in any case that there are no insolvency proceedings in progress against the foreign company or the branch.

If the foreign company is dissolved without a legal successor, deletion of the branch must also be requested from the court of registration.[221] In this case, the conditions for cancellation referred to in the previous paragraph apply.

3. *Books and Records*

The laws applicable to companies with domestic registered offices apply to the business activities and the domestic business behavior of a branch office, which must keep its books in accordance with the Hungarian laws on accounting. Special rules apply to branches of foreign companies conducting financial activities.

The provisions, special regulations, and any exemptions relating to accounting, the annual accounts, and the disclosure and publication of the annual accounts of branches are set out in the Accounting Act. A branch is required to file the foreign company's annual accounts at the company information register within 60 days from the date of approval of the annual accounts.[222]

F. Other Business Entities

1. *European Company*

The European company (*Európai Részvénytársaság; Societas Europaea* or SE) is a legal structure that allows a company to operate in different EU Member States under a single statute, as defined by the law of the European Union and common to all EU Member States. The structure facilitates the operation of companies wishing to expand their business at the EU level.[223] The involvement of employees in an SE is also regulated. An SE must be established and operated in accordance with Council Regulation EC No. 2157/2001 of October 8, 2001, on

[211] Passed by Parliament on December 2, 1997.
[212] Branch Act, Sec. 3(1).
[213] Branch Act, Sec. 3(1a). Enacted by Act CLI of 2012, Sec. 29 § (1). In force as of October 28, 2012.
[214] Branch Act, Sec. 4(1).
[215] Branch Act, Sec. 6(2).
[216] Branch Act, Sec. 10(4).
[217] Branch Act, Sec. 18(2).
[218] Branch Act, Sec. 17(1).
[219] Branch Act, Sec. 11(2).
[220] Branch Act, Sec. 19(3).
[221] Branch Act, Sec. 23(4).
[222] Branch Act, Sec. 12(2).
[223] www.eur-lex.europa.eu.

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the Statute for a European company (SE) and Council Directive 2001/86/EC of October 8, 2001, supplementing the Statute for a European company with regard to the involvement of employees. Act XLV of 2004 on European Companies, together with the above-mentioned Council Regulation and Council Directive, are applicable to an SE that has its registered seat in Hungary.

An SE is established with at least two companies originating in different EU Member States, which, in particular, means that an SE can only be created from an existing base. An SE must have a capital of at least 120,000 euros.[224] The registration of an SE in Hungary and other registry proceedings are subject to the provisions of the CRA Act.[225]

The registered office of an SE, as specified in its statutes, must be the place where it has its central administration. An SE may transfer its registered office within the European Union. The statutes of an SE must provide for governing bodies, such as the general meeting of shareholders, a management board and a supervisory board, or an administrative board (for companies with a one-tier system).

An SE is subject to taxes and charges in all EU Member States in which its administrative centers are located.

2. Commercial Representative Office

A commercial representative office *(kereskedelmi képviselet)* is an organizational unit of a foreign company without legal personality that can operate from the time it is registered in the company register.

The scope of activities of a commercial representative office is limited to mediating and participating in the preparation of contracts on behalf of the foreign company, and performing information, advertising and promotional activities on behalf of the foreign company.[226]

A commercial representative office may not conduct business activities that yield profits or other proceeds in its own name and may not provide lawyer's services; however, it may conclude contracts related to its operation in the name and for the benefit of the foreign company.

The same employment rules apply to a commercial representative office as those that apply to a branch of a foreign company.

3. Corporate Groups

A recognized group of corporations *(elismert vállalatcsoport)* means a form of cooperation featuring a common business strategy between at least one dominant member that is required to draw up consolidated annual accounts and at least three members controlled by the dominant member under a control contract. A group of corporations may consist of corporations, private limited liability companies, groupings, and cooperative societies.[227]

4. Cooperative Society

A cooperative society *(szövetkezet)* is a legal person established with a capital made up of its members' contributions. A cooperative society operates under the principle of open membership and variable capital with the objective of providing assistance to its members so as to satisfy their economic and societal needs. The obligation of the members towards the cooperative society consists of providing the capital contribution and their personal involvement as provided for in the society's statutes. The members do not bear any liability for a cooperative society's obligations. The activities of a cooperative society may include sales, purchases, production, and the provision of services.[228]

5. Professional Associations

A professional association (*egyesülés*) is a cooperative association with legal personality, founded by its members with a view to improve the efficiency of their financial management, coordinate economic activities, and represent their professional interests. Profit-making for itself may not be the primary aim of the association. The members of the association bear unlimited joint and several liability for debts exceeding its assets. The association may also perform other services and complementary economic activities to supporting its coordination duties.[229]

6. Civil Law Partnerships

Under a civil law partnership agreement, the parties undertake to cooperate in order to achieve their common objectives and make the capital contributions necessary for achieving such objectives, and to bear the risks of their activities collectively.[230]

All members of a civil law partnership must provide capital contributions in equal proportions. Capital contributions may be provided in the form of money, a marketable item of value, intangible property or any other form of service, such as — in particular — work performed in person. As regards the assets contributed, the assets that cannot be consumed will be used collectively, and those that can be consumed will be owned jointly.[231]

As a general rule, the profits and losses from the common activities of a civil law partnership must be distributed among the members in proportion to their capital contributions. Parties may depart from this rule, but any agreement excluding any member from receiving a share of the profits or from covering losses is null and void.

G. Classification of Foreign Entities

There is no classification of foreign entities under Hungarian domestic law.

[224] www.eur-lex.europa.eu.
[225] Act XLV of 2004, Sec. 2.
[226] Branch Act, Sec. 27(1).
[227] Civil Code, Sec. 3:49.
[228] Civil Code, Sec. 3:325.
[229] Civil Code, Sec. 3:368.
[230] Civil Code, Sec. 6:498.
[231] Civil Code, Sec. 6:500(1).

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H. Dissolutions, Liquidations, Bankruptcy, and Reorganizations

1. In General

According to the general provisions of the Civil Code concerning legal persons (for example, private limited liability companies, partnerships, and corporations), a legal person must terminate without succession if it is:

(i) Established for a fixed term, when the fixed term expires;

(ii) Subject to termination upon the fulfillment of a certain condition, when the condition is fulfilled;

(iii) Declared terminated by its members by at least a three-quarters majority; or

(iv) Terminated by the body that has the power to do so.

In all cases, termination will occur if the legal person is cancelled from the registry following completion of the appropriate procedure for the settlement of its financial affairs.

Following the dissolution of a legal person without succession, the assets remaining after settlement of all debts must be allocated to the legal person's members *pro rata* to the capital contributions they or their predecessors provided to the legal person.

2. Dissolutions

If the company is not insolvent and it is not otherwise provided by the relevant regulations, a company may be wound up without succession by way of dissolution proceedings.[232] The supreme body of a company is entitled to adopt a decision on the initiation of a dissolution procedure and on the appointment of a liquidator. From the starting date of the dissolution, the liquidator appointed by the supreme body must be the sole duly authorized representative of the company and the company must append to its corporate name the abbreviation "*v.a.*" (*végelszámolás alatt*, meaning "under dissolution").

The liquidator has an individual right of representation and must take special care as generally expected from persons in such positions, serving the best interests of the company under dissolution and the interests of creditors. The liquidator must assess the company's financial position in the course of the dissolution proceedings, recover its claims, pay its debts, enforce its rights, discharge its obligations, and sell its assets if necessary. The liquidator must distribute the assets remaining after the satisfaction of creditors among the members in cash or in-kind and must terminate the company's operations.[233]

A company cannot be terminated by a dissolution procedure if it is declared insolvent by the court, or if it is indicted in criminal proceedings carrying possible criminal sanctions. Dissolution proceedings may not be concluded if the company is under official or legal proceedings.

The initiation of a dissolution procedure must be published in the Company Gazette. Any creditors of the company may report their claims to the liquidator within 40 days following the publication of the dissolution. The CRA Act contains detailed regulations regarding the procedure the liquidator must follow in the case of dispute regarding any of the reported claims.

On conclusion of the dissolution procedure, the liquidator must prepare and present to the supreme body of the company for its approval the tax returns, the final closing annual balance, the proposal for the distribution of assets and the proposal on the future of legal entities in which the company had a share and of associations and foundations that operated with the participation of the company.[234] After the above documentation has been approved, the liquidator must submit to the court of registration a request for the cancellation of the company from the corporate register.

3. Liquidations

A liquidation procedure is a procedure designed to provide satisfaction, as laid down in the Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings (the "Bankruptcy Act"), to the creditors of an insolvent debtor on its winding-up without succession. The provisions of the Bankruptcy Act are applicable to all economic organizations (for example, companies such as private limited liability companies, corporations, partnerships, law offices, foundations, and associations) and their creditors.

A liquidation procedure is conducted in the event of the insolvency of a debtor, *ex officio* (after an unsuccessful bankruptcy procedure; see 4., below) or at the request of a debtor, a creditor or a liquidator in a dissolution procedure, or by the court in certain cases defined in the Bankruptcy Act.

The court will order the liquidation of the debtor if it finds that the debtor is insolvent. The court will declare the debtor insolvent if:[235]

(i) The debtor fails to settle or contest its previously uncontested or acknowledged contractual debts within 20 days of the due date, and fails to satisfy such debt on receipt of a creditor's written payment notice;

(ii) The debtor fails to settle its debts within the deadline specified in a final court decision or order for payment;

(iii) The enforcement procedure against the debtor was unsuccessful;

(iv) The debtor did not fulfill its payment obligation as stipulated in the composition agreement concluded in bankruptcy or liquidation proceedings, the debtor failed to comply with the terms of the reorganization plan approved by the court in a reorganization procedure or failed to comply with the terms of the restructuring plan approved by the court in a restructuring procedure;

(v) The court has declared the previous bankruptcy proceedings terminated (see 4., below); or

(vi) The debtor's liabilities in proceedings initiated by the debtor or by the liquidator in a dissolution procedure exceed the debtor's assets, or the debtor is unable to settle its debts and presumably will not be able to settle them on the date on which they are due, and in a dissolution procedure

[232] CRA Act, Sec. 94(1).
[233] CRA Act, Sec. 103(1).
[234] CRA Act, Sec. 111.
[235] Bankruptcy Act, Sec. 27(2).

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the members fail to provide a statement of commitment, following due notice, to guarantee the funds necessary to cover such debts when due.

When the court decision ordering the liquidation becomes final, the court appoints a liquidator and publishes its ruling on the liquidation in the Company Gazette.[236] From the starting date of the liquidation, the liquidator appointed by the court is the sole duly authorized representative of the company and the company must append to its corporate name the abbreviation *f.a.* (*felszámolás alatt*, meaning "under liquidation").

The creditors must report their claims to the liquidator within 40 days of the date on which the court ruling on the liquidation was published in the Company Gazette. The liquidator must also register claims reported after the 40-day period, but within 180 days of the publication date, but these claims may be settled only if there are sufficient funds remaining following the settlement of the debts reported within the 40-day deadline.

The liquidator must analyze the financial standing of the debtor company and the claims existing against it,[237] and must collect the claims of the debtor when due, enforce its claims and sell its assets.[238] As a general rule, the liquidator must dispose of the debtor's assets through public sales (by tender or auction) at the highest price that can be obtained on the market.[239]

Under the Bankruptcy Act, before the final liquidation balance sheet is submitted to the court, it is also possible for a composition agreement to be concluded between the creditors and the debtor, subject to the approval of the court. The court will approve a composition agreement if the solvency of the company under liquidation is restored by the composition, the registered claims that are considered as costs of the liquidation are satisfied or sufficient funds are available to cover such claims, and the composition complies with the relevant legal regulations. At the same time as it approves the composition agreement, the court provides for the conclusion of the liquidation procedure.

The debts of a company must be satisfied from its existing assets in the order laid down by the Bankruptcy Act. The costs of the liquidation (including the salaries of the employees of the debtor) must be satisfied before any other registered claims; the claims secured by pledge identified by detailed description and tax (and other public) debts must be satisfied before the unsecured claims.

Based on the final liquidation balance sheet and the proposal for the distribution of assets that the liquidator prepares upon the closing of the liquidation, the court adopts a decree on the bearing of costs, the liquidator's fee, the satisfaction of the claims of creditors, the closing of current accounts, and the abrogation of securities issued by the debtor by way of the central depository. The court will also order the liquidator to take any measures still required (for example, informing the authorities of the final liquidation so that they may cancel any existing beneficial rights of the debtor). At the same time, the court must decide matters concerning the conclusion of the liquidation, the dissolution of the debtor, and the dissolution of any subsidiary of the debtor or trust company, where applicable.[240]

4. Bankruptcy Procedure

Bankruptcy is a procedure whereby a debtor is granted a moratorium for purposes of reaching an arrangement with its creditors.[241] The executive officer of an economic organization may start bankruptcy proceedings at the competent court with the prior consent of the organization's supreme body.

The court provides for the publication of the petition of the debtor and the immediate, temporary moratorium the debtor receives within one working day in the Company Gazette.[242] Following this, the court reviews the debtor's petition and, if it meets the requirements of the Bankruptcy Act, the court will forthwith provide for the opening of the bankruptcy proceedings and for the appointment of an administrator and will consequently provide for having the decision thereon published in the Company Gazette. From the date of publication, the company must append to its corporate name the abbreviation "*cs.a*" (*csődeljárás alatt*, meaning "under bankruptcy procedure"). From the date of publication, the debtor is entitled to a moratorium of 180 days. The publication must also include a notice to the creditors, under which they can announce their claims to the debtor and to the appointed administrator within 30 days of the publication date on payment of a registration fee (1% of the claim, but no less than HUF 10,000 and no more than HUF 200,000).

The purpose of the moratorium is to preserve the assets of the company under bankruptcy with a view to reaching a settlement with its creditors. The debtor must convene a meeting of the creditors within 90 days of the opening of the bankruptcy procedure with the aim of reaching a settlement. The arrangement between the creditors and the debtor must include the conditions for settlement of the debts, such as: allowances and payment facilities relating to the debt; the remission or assumption of certain claims; the receipt of shares in the debtor company in exchange for debt; guarantees for the satisfaction of claims and other similar securities; the approval of the debtor's program for restoring financial balance and cutting losses; and any and all other actions deemed necessary to restore or preserve the debtor's solvency, including the duration of, and the procedures for, monitoring the implementation of the composition arrangement.[243]

A composition arrangement may be concluded at a conference if the debtor is able to secure the majority of the votes for the arrangement from creditors holding both secured and unsecured claims.[244] Creditors that registered claims within the 30-day deadline and paid the registration fee, and whose claims are registered under recognized or uncontested claims by the administrator, will hold voting rights in the composition conference. The composition arrangement will also apply to those creditors that did not consent to it or failed to participate at the meeting, if they were otherwise entitled to participate in the composition arrangement.

[236] Bankruptcy Act, Sec. 28(1).
[237] Bankruptcy Act, Sec. 46(1).
[238] Bankruptcy Act, Sec. 48(1).
[239] Bankruptcy Act, Sec. 49(1).
[240] Bankruptcy Act, Sec. 60(1).
[241] Bankruptcy Act, Sec. 1(2).
[242] Bankruptcy Act, Sec. 9(1).
[243] Bankruptcy Act, Sec. 19(1).
[244] Bankruptcy Act, Sec. 20(1).

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The debtor must notify the court about the outcome of the composition conference and if an agreement with the creditors was reached; the arrangement is also submitted to the court. If the composition arrangement complies with the relevant legal regulations, the court approves it and terminates the bankruptcy procedure.[245] If no composition is arranged, or if the arrangement fails to comply with the relevant regulations, the court will terminate the bankruptcy procedure and will consequently declare the debtor insolvent *ex officio* and order its liquidation.[246]

5. Temporary Reorganization Procedure

To ensure the continued operation of companies threatened by bankruptcy due to the COVID-19 pandemic, Government Decree No. 345/2021 (VI.18.) introduced a temporary reorganization procedure. This Decree was effective until December 1, 2021; from that date on the regulations concerning reorganizations are governed by the Act XCIX of 2021 (Act on Transitional Rules Connected to the State of Emergency). The purpose of this emergency measure was to improve the financial position and solvency of vulnerable companies.

Under the temporary procedure, the authorized decision-making body of the company concerned has to adopt a resolution to undergo a reorganization, which shall be filed with the competent court and a request to initiate a reorganization. The reorganization procedure is conducted with the participation of a reorganization expert, who prepares an assessment, provided the company complies with the requirements set forth in Act XCIX of 2021. Reorganizations conducted under this procedure are non-public as a general rule, meaning the order is not published in the Company Gazette and the related data on the reorganization are not made public. The reorganization expert decides if the company is suited to a successful reorganization. If so, the court approves the reorganization plan and orders a moratorium. During the period of the moratorium, the company tries to reach an agreement with its creditors in accordance with the reorganization plan, which has to be executed within two years. The application for reorganization procedure can be filed with the court until December 31, 2024.[247]

6. Restructuring Procedure

The current restructuring procedure under Hungarian law was introduced by Act LXIV of 2021 on Restructuring and the Amendment of Certain Acts for the Purpose of Legal Harmonization (the "Restructuring Act"), which entered into force on July 1, 2022. The Restructuring Act transposes into Hungarian law Titles I and II of Directive (EU) 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132.

The purpose of a restructuring is to adopt and implement a restructuring plan with some or all of a debtor's creditors so as to prevent its insolvency and ensure its operability.[248] A debtor may adopt a decision to undertake a restructuring in the event of a probable insolvency by a vote of at least three-quarters of the decision-making body of the company. The restructuring period lasts from its starting date until the final date of implementation of the restructuring plan or until the restructuring fails. The Restructuring Act establishes both the time frame within which the debtor may continue negotiations for restructuring its debts and the limitations which lead to the failure of the restructuring.

Once a debtor has adopted a decision to initiate a restructuring, it must file an application with the Metropolitan Court of Budapest, which has exclusive jurisdiction and competence in restructuring procedures. If the restructuring plan is approved by the court, the rights and obligations contained in the restructuring plan shall extend to the debtor, all creditors concerned and the parties who have entered into the restructuring plan by way of a declaration of intent.

The Restructuring Act places particular emphasis, as provided for in the EU Directive, on the protection of employees' interests.

[245] Bankruptcy Act, Sec. 21/A.
[246] Bankruptcy Act, Sec. 21/B.
[247] Act XCIX of 2021, Sec. 72(2).
[248] Restructuring Act, Sec. 6.

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IV. Principal Taxes

A. *Sources of Authority in Tax*

1. *Legislative*

a. *Organization of the Tax Law*

As a Member State of the European Union, Hungary's taxation legislation is subject to harmonization with the corresponding EU laws. In addition, Hungary is a party to bilateral tax treaties for the avoidance of double taxation with more than 75 countries. The provisions of these treaties override the provisions of Hungary's national laws.

Hungary was one of the 69 signatories to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the "Multilateral Instrument" or MLI) signed on June 7, 2017. On March 25, 2021, Hungary deposited with the OECD its instrument of ratification of the MLI.[249] The MLI entered into force for Hungary on July 1, 2021. Hungary lists 74 agreements that it wishes to be covered by the MLI. Hungary has undertaken to apply relatively few articles of the MLI, while choosing to reserve the right not to apply the entirety of quite a few articles: Articles 3 (Transparent Entities), 4 (Dual Resident Entities), 5 (Application of Methods for Elimination of Double Taxation), 8 (Dividend Transfer Transactions), 9(1) (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property), 10 (Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions), 11 (Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents), 12 (Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies), 13 (Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions), 14 (Splitting-up of Contracts), 15 (Definition of a Person Closely Related to an Enterprise), and 17 (Corresponding Adjustments).

Taxes in Hungary are levied by the Parliament or other bodies authorized by Parliament. Except for local taxes, taxes are valid and apply equally throughout Hungary. The procedures for tax-related issues are included in three codices: Act No. CL of 2017 on the Rules of Taxation, Act CLI of 2017 on Tax Administration and the Regulation of Tax Administration, and Act CLIII of 2017 on Enforcement Proceedings to be Implemented by the Tax Authority.

Besides the major national taxes, which are covered in separate tax acts, Act No. C of 1990 on Local Taxes empowers local governments to levy five different types of local taxes (i.e., building tax, property tax, communal tax, tourism tax, and local business tax) at rates up to a maximum specified by the Act. In addition to acts adopted by Parliament and decrees issued by the local municipalities, certain details of the taxation system may be included in lower-level legislative instruments, such as government and ministry decrees.

[249] https://www.oecd.org/tax/treaties/beps-mli-position-hungary-instrument-deposit.pdf.

b. *Other Legislative Documents That Can Be Used to Interpret the Law*

Legislative history, i.e., debates in Parliament during the adoption of bills, are generally not taken into account in interpreting the laws. However, the official reasoning of bills is sometimes referred to in legal arguments.

Each year, the Hungarian tax authorities issue "information bulletins," which are published on their website (www.nav.gov.hu). In addition, a taxpayer can apply directly to the tax authorities for further guidance in connection with a specific tax issue. The tax authorities will respond to these queries usually within 30 days; however, the guidance provided has no binding effect and the information contained therein is to be regarded merely as a professional opinion. Nevertheless, if the question to the tax authorities is formulated in a clear and unambiguous manner, then the response of the tax authorities can be safely relied upon. In addition to these non-binding rulings, it is also possible to obtain a binding tax ruling (see V.B.13., below).

In addition to the non-binding and binding rulings that can be obtained from the tax authorities, the decisions of the Supreme Court (*Curia*) are also of assistance in the interpretation of tax legislation. Although the decisions of the Supreme Court are not directly applicable and are not binding on the courts of lower instance, in practice, the courts do rely on the decisions of the Supreme Court and are unlikely to deviate from a decision in a matter based on similar facts. The decisions of the Supreme Court are published on an anonymous basis and are accessible to everyone.

Furthermore, the decisions of the Court of Justice of the European Union (CJEU) are also relevant: the courts of the EU Member States may apply for a preliminary ruling to the CJEU in cases in which there is a dispute as to whether a given piece of national legislation is in line with applicable EU level regulations or directives. This also applies to tax-related issues and the CJEU has passed various decisions in such proceedings.[250]

c. *Legislative Process*

The legislative process starts with the government submitting a bill to Parliament along with its justification and reasoning. A budget bill must be submitted at the latest by September 30 of the year concerned. The detailed procedure is set out in Parliament Resolution No. 10/2014 (II.24.).

First, the bill is distributed among the parliamentary committees for review. The committees deliver their opinion regarding the bill and the Budget Committee summarizes the opinions of the various committees. This is followed by a general discussion of the bill at the plenary session of Parliament. At this stage, the government explains the bill, after which the members of Parliament have the right to comment on it. The general discussion may take a few weeks. Amendment proposals can be submitted until the general debate on the bill is finalized. The bill then goes back to the parliamentary committees. This time, the committees review the amendment proposals and are also allowed to submit their own amendment proposals.

[250] *See, e.g.,* C-261/05, C-563/12, C-444/12 and C-191/12.

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The second stage is the detailed discussion of the bill, which focuses on the amendment proposals. The detailed discussion of the budget bill is conducted in two phases: first, amendments affecting the main figures of the budget are discussed; and, second, once the main figures are fixed, the amendments relating to regroupings among certain budget lines will be on the agenda. Between the two stages, the bill is sent back and forth between the plenary session and the Budget Committee, the latter being in charge of re-adjusting the figures.

The process of voting starts with Parliament voting on the amendment proposals. Based on the outcome of the voting, the final restated bill will be drafted and submitted for final discussion and voting. During this stage, minor errors and potential discrepancies are eliminated before Parliament finally adopts the bill. After Parliament votes, the chairman of Parliament signs the bill, which is followed by the signing of the bill by the President.

The President has two options in addition to signing the bill. If constitutional concerns arise, the President may send the bill to the Constitutional Court for review. If the bill is held to be unconstitutional by the Constitutional Court, the President returns the bill to Parliament. If concerns arise that are not of a constitutional nature, the President is still allowed to return the bill to Parliament for reconsideration. However, in this case, Parliament is under no obligation to make any changes, since the President has no veto power and is obliged to sign the bill.

Once the bill is signed by the President, it will be published in the Hungarian Gazette — this is the final step in the process by which a bill becomes law.

An important guarantee under Hungarian law prohibits a new law from retroactively prescribing an obligation, making an existing obligation stricter, or depriving or restricting a particular right. Furthermore, the date of entry into force of a certain law must be prescribed in such a manner that sufficient time remains to prepare for its application.[251] In terms of financial and tax laws, this means that no income can be declared taxable retroactively, but tax relief, allowances, and credits may be granted on a retroactive basis.

d. Constitutional Challenge

In addition to the right of the President to challenge a bill at the Constitutional Court even before it becomes law, there is an option for a subsequent challenge as governed by Act CLI of 2011.

The courts (in specific cases), the government, one-fourth of all Members of Parliament, the President of the Supreme Court, the Prosecutor General, the Commissioner of Fundamental Rights and even private individuals may ask the Constitutional Court to review whether a particular law is in harmony with the Constitution or with Hungary's international treaties.[252]

However, an important restriction has been placed on the Constitutional Court. When government debt exceeds half of gross domestic product (GDP), the Constitutional Court's ability to review certain laws (including the central government's budget and its implementation, central tax revenues, duties and contributions, and customs duties) is limited. The only consideration the Constitutional Court can take into account when reviewing laws in these areas is their conformity with the Constitution regarding certain inherent rights (i.e., life and human dignity, the protection of personal data, freedom of thought, freedom of conscience, freedom of religion, and rights in connection with Hungarian citizenship). This means that, until a healthy macroeconomic balance is reached (i.e., debt is below 50% of GDP), the Constitutional Court may annul such laws only if they infringe on these inherent rights. That being said, the Constitutional Court does have broader power to annul unconditionally, if the formalities and procedures laid down by the Constitution concerning the adoption and publication of these laws are not satisfied.[253]

2. Administrative

The tax authority is the National Tax and Customs Administration. It is organized into two levels: the county level (where, with a few exceptions, such as Budapest, various districts are combined) and the regional level. For non-binding rulings, the taxpayer may apply to the competent tax authority of the first instance.

Although there is also a national level tax administration body, in general, it has only limited functions in individual tax matters, mainly supervising the operation of the lower-level tax authorities. However, in certain specific cases, it has authority in individual tax matters. For example, the head of the national tax and customs authority may order the re-examination of an already audited period.

As explained in V.B.13., below, binding rulings for provisional tax assessments and advance pricing agreements (APAs) can be obtained from the ministry competent for tax issues, i.e., the Finance Ministry.

3. Courts

Final decisions of the tax authorities may be challenged in court.

Hungary has a two-tier court system in civil matters: the court of first instance is either the local district court or the county court (in the capital, the metropolitan court); and the court of second instance is either the county court (if the case started at local court level) or one of the five regional courts of appeals (if the court of first instance was a county court). Judgments of first instance are, as a general rule, subject to appeal and the judgment reached by the court of second instance will be legally binding. However, in certain circumstances, a legally binding judgment may still be challenged.

A motion for retrial may be submitted against a final judgment if:

(i) The party concerned presents any fact or evidence, or any binding court or other official decision that the court did not take into consideration during the hearing, if it would have been to the party's benefit had it been considered originally;

(ii) The party concerned lost the action as a consequence of a crime committed by a judge who took part in render-

[251] Act CXXX of 2010, Sec. 2(3).

[252] Constitution, Art. 24(5).

[253] Constitution, Art. 37(4).

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ing the judgment, or by the opposing party or any other person, contrary to the law;

(iii) The party refers to a judgment of the European Court of Human Rights given in his or her own case, establishing an infringement of any right provided for in the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950, promulgated by Act XXXI of 1993, and in its additional protocols, provided that the final judgment given in his or her case is based on the same infringement, and the party received no satisfaction from the European Court of Human Rights, or the injury cannot be remedied by indemnification;

(iv) A final judgment has previously been adopted relating to the same right; or

(v) The statement of claim or any other document was delivered to the party concerned by way of public notification in violation of the provisions on service of process by public notification.[254]

In addition, a legally binding judgment may be challenged at the Supreme Court (*Curia*) on the grounds of misinterpretation of the law. These procedures, however, do not affect the enforceability of the judgment unless the Curia specifically suspends the enforceability of the judgment.

As far as the decisions of administrative agencies are concerned, the decisions of first instance are always subject to some type of review. If a decision is subject to appeal (as determined for such administrative proceeding in the relevant law), the county level administrative agency will review the matter (as is generally the case with the decisions of the tax authorities). If the decision of the administrative agency is not subject to appeal, then the decision can be directly challenged in court.

In administrative court proceedings, eight courts of appeal have jurisdiction: the ones in Győr, Debrecen, Miskolc, Pécs, Szeged, Veszprém and two in Budapest.[255]

In case of administrative legal disputes, the competent court is usually determined on the basis of the seat of the administrative agency adopting the resolution of first instance. Where, however, real estate or activities subject to state licensing are concerned, the location of the real estate or activities (as the case may be) will define the competent court. In addition, if the jurisdiction of the administrative body adopting the resolution covered more than one county, then the applicant's place of residence (domicile or seat) will be decisive.[256]

Whether or not the decisions of the court of first instance are subject to appeal depends on the specific type of procedure. The decisions of the county courts (i.e., not of the administrative departments of the county courts) are always subject to appeal.

As noted above, by law, court decisions, with the exceptions of certain published decisions of the *Curia*, do not have precedential value, however, in practice they are usually treated as if they did have such value.

[254] Act CXXX of 2016, Sec. 393.
[255] Act CLXI of 2011, Sec. 21(4).
[256] Act Nr. I of 2017, Sec. 13(1).

B. Income Tax

1. Personal Income Tax

The main rules on personal income tax (PIT) are contained in Act No. CXVII of 1995 on Personal Income Tax (the "PIT Act"). Resident taxpayers are subject to Hungarian tax liability with respect to all of their income, regardless of source ("all-inclusive tax liability"). Nonresident private individuals are liable to Hungarian tax on income that originates in Hungary, or income taxable in Hungary based on an international convention or mutuality.[257]

As a general rule, the tax rate is 15% of the tax base,[258] subject to a few exceptions regarding entrepreneurs' income tax and the tax on the yield on long-term investments. In addition, a few tax credits are available to reduce the personal tax burden.

Depending on the nature of the PIT, it is either a withholding tax or is paid monthly, quarterly, or yearly by the taxpayer himself or herself.

2. Corporate Income Tax

The taxable income of Hungarian companies is subject to corporate income tax (CIT) at a flat rate of 9%.[259] The CIT at that rate applies to the taxable income of all business entities without distinction as to form.

The CIT is based on profits before tax, as established in the profit and loss statement prepared in accordance with Accounting Act No. C of 2000 (the "Accounting Act"), but the tax base is subject to certain modifications including, but not limited to: losses carried forward, deductions such as deduction for research and development (R&D) ("deductions"), penalties and fines, and costs and expenses not incurred in the interest of the corporation concerned ("additions").

If the pre-tax profit of a company or its tax base, whichever is higher, is less than a specified income threshold, the company has the option of either:

(i) Reporting actual costs in its tax return; or

(ii) Using the amount of the threshold ("minimum income") as its tax base and paying tax on that.

The amount of minimum income is 2% of modified total annual income.[260]

The CIT is calculated on a yearly basis, but tax advances are payable monthly or quarterly. As a general rule, tax advances are payable in equal monthly installments, if the previous year's tax amount is HUF five million or more, and quarterly, if the previous year's tax amount is below that amount.[261]

For the various tax credits and allowances, see V.B.4. through 7., below.

[257] Act No. CXVII of 1995 on Personal Income Tax (the "PIT Act"), Sec. 2(4).
[258] PIT Act, Sec. 8(1).
[259] CIT Act, Sec. 19.
[260] CIT Act, Sec. 6(7).
[261] CIT Act, Sec. 26(7).

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3. Global Minimum Tax

Act LXXXIV of 2023 on additional taxes ensuring application of the 15% global minimum tax level and amending certain tax laws in this context transposes Council Directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the EU, which entered into force on December 31, 2023. The Hungarian legislation recognizes corporate tax, local business tax, the innovation contribution and the Robin Hood tax (income tax on energy suppliers) as taxes covered by the Directive. For a detailed discussion, see XIV.D., below.

C. Estate and Gift Tax

1. Estate Tax

Any property acquired on the basis of inheritance, including redemption of the right to use a property, gifts of real property and bequests specified in a will, an heir's compulsory share of the inheritance, and gifts *mortis causa*, are subject to the estate tax.[262]

The estate tax is payable by the recipient at the general rate of 18% of the net worth (market value) of the inherited share of the estate received by any one heir or legatee. The rate for residential properties is 9%.

2. Gift Tax

The following are subject to gift tax:

(i) Gifts of real property;

(ii) Gifts of movable property; and

(iii) The granting, surrender, exercise, or waiver of rights to real or movable property for no consideration.

The gift tax applies with respect to the above assets or rights provided the gift is duly documented, or with respect to undocumented transfers of movable property if the market value of the movable property granted to any one donee exceeds HUF 150,000.[263]

Note: The non-taxable cap applies separately to each item donated throughout a year, generally without being aggregated. However, transactions in immediate succession aimed to avoid exceeding the cap may still be regarded as one transaction by the tax authority and thus become taxable.

The general rate of gift tax is 18% of the net worth (market value) of the gifts received by any one donee. However, transfers of residential property are subject to a 9% rate and transfers of motor vehicles and arable land are subject to special rates.

D. Value Added Tax

1. Taxable Transactions

Hungary's value added tax (VAT) legislation (Act No. CXXVII of 2007 — the "VAT Act") is in line with related EU directives.

As a general rule, VAT is charged on the following transactions:

(i) Supplies of goods and services provided for consideration in Hungary;

(ii) Intra-EU acquisitions of goods in Hungary; and

(iii) Imports of goods.[264]

The standard VAT rate for goods and services is 27%.[265] A reduced 18% rate applies to hotel services and certain dairy and baked products. Other items, such as goods and services related to medical treatment, as well as books and newspapers, are taxed at the rate of 5%. In addition, certain services are exempt from VAT, such as certain public services, and financial and insurance services.

The amount of VAT payable generally is determined at the time of delivery of the goods or provision of services.[266] However, a few exceptions apply, for instance, in connection with the intra-EU acquisition of goods, where VAT becomes chargeable on receipt of the invoice issued as proof of completion of the transaction, or at the latest on the 15th day of the month following the date of fulfillment.

In connection with the supply of goods and/or services, the taxable amount is the consideration obtained by the supplier in return for the supply from the customer or a third party, including subsidies directly linked to the price of the goods or services supplied.[267] In certain cases, the taxable amount is the fair market value (for instance, if the consideration is not expressed in monetary terms or if the transaction takes place between related entities and the consideration is either too high or too low).

For further research on Hungary's VAT system, see also the VAT Navigator.

2. Place of Performance

The determination of domicile is important not only from a CIT perspective, but also from a VAT perspective.

From a VAT perspective, domicile is important in two contexts: (i) in determining the place of performance of services; and (ii) in determining who is the taxpayer.

In determining the place of performance of services for VAT purposes, the first issue to consider is whether the recipient of the service qualifies as a VAT taxpayer. As a general rule, in business-to-business (B2B) relations, the domicile of the recipient of the services is used, while in business-to-consumer (B2C) relations, the domicile of the service provider defines the place of performance of the services.[268]

The next issue is whether the direct VAT mechanism or the reverse charge mechanism should apply as described in 3., below. If the place of fulfillment is in Hungary, but the seller/service provider is not domiciled in Hungary for VAT purposes, VAT is payable by the taxpayer registered in Hungary (i.e., under the reverse charge mechanism).

Consequently, the place of business has a decisive role both in determining whether the provision of services is taxable under the Hungarian VAT Act and in determining whether the

[262] Act No. XCIII of 1990, Sec. 8(1).
[263] Act No. XCIII of 1990, Sec. 11(1)–(2).
[264] Act No. CXXVII of 2007 (the "VAT Act"), Sec. 2.
[265] VAT Act, Sec. 82(1).
[266] VAT Act, Sec. 84(1).
[267] VAT Act, Sec. 65.
[268] VAT Act, Sec. 37(1)–(2).

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VAT on the sale of products or the provision of services is payable by the seller/service provider or by the buyer/recipient of the services.

Under Subsection (1) of Section 254 of the VAT Act, a taxpayer is considered to have established its business in the place where its registered office or fixed establishment is located. The term "registered office" means the principal place of business and central management of the economic activity.[269]

In addition, the definition contained in Council Implementing Regulation (EU) No. 282/2011 of March 15, 2011, laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (the "EU VAT Regulation") must be taken into account in determining whether a place qualifies as a registered office. Accordingly, the place where essential decisions concerning the general management of the business are taken, the place where the registered office of the business is located, and the place where management meets should all be taken into account.[270] Where these criteria do not allow the place of establishment of a business to be determined with certainty, the place where the essential decisions concerning the general management of the business are taken will take precedence. Furthermore, under the EU VAT Regulation, the mere presence of a postal address may not be taken to be the place of establishment of a business of a taxable person.[271]

The definition of the term "fixed establishment" has changed considerably over time. Under VAT Act Nr. CXXVII of 2007, effective as of January 1, 2008, a fixed establishment means a durable facility established at a different location away from the registered office, established or intended for conducting economic activity, where the conditions for the economic activity are in fact available independently from the registered office.[272]

This definition of fixed establishment is consistent with the definition included in Article 11 of the EU VAT Regulation. It should be noted that the EU VAT Regulation defines the term "fixed establishment" separately for purposes of the receipt of services and for purposes of the rendering of services. Given that, in B2B relations, the registered office or fixed establishment of the recipient of the service is decisive in terms of the place of fulfillment from a VAT perspective, in a B2B context the term is to be examined to ascertain whether the recipient of the services possesses the suitable structure in terms of human and technical resources to enable it to receive and use the services. In B2C relations it is to be examined with regard to the service provider.

This means that a particular establishment may qualify differently in relation to different business transactions, depending on its structure in terms of human and technical resources. For example, there can be a fixed establishment that is not capable of receiving or using certain complex services (such as business or marketing consultation) but is capable of providing certain specific services (such as technical reviews of power plants).

Furthermore, the fact of having a VAT identification number is not in itself sufficient to consider that a taxable person has a fixed establishment.[273]

Thus, a certain degree of permanence, suitability of structure, and existence of the necessary human and technical resources are required for an establishment to qualify as a fixed establishment for VAT purposes. These criteria are still being clarified through jurisprudence and do not necessarily coincide with the term "place of business" used for CIT purposes.

3. Determination of Taxpayer and Reverse Charge Mechanism

As a general rule, VAT is payable directly by the seller/service provider.[274] However, a reverse charge mechanism may apply (so that the tax will instead be payable by the recipient of the goods or services) in certain cases, including in connection with the following:

(i) The actual handing over of a constructed structure that is in the process of being registered in the real estate register in the name of the customer, whether or not the customer has provided all or any part of the materials used for construction;

(ii) Construction and other similar real property work, which is treated as services supplied for purposes of building, expansion, remodeling, demolition or alteration of purpose, provided the activity is subject to authorization from the competent building authority or to the building authority's acknowledgement, and such authorization or acknowledgement is made available in advance, in writing;

(iii) Temporary employment agency services, temporary assignment, and the supply of staff relating to building and construction and other installation works for the purpose of building, expansion, remodeling, and any other form of alteration of a real property;

(iv) The transfer of a negotiable right for the emission of greenhouse gases (emission allowance unit);

(v) The supply of goods used by the taxable person for purposes of its business, and other supplies of goods or services with a market value of HUF 100,000 or more at the time of supply, if the taxable person supplying the goods or services is undergoing liquidation proceedings or any similar insolvency proceedings; or

(vi) The sale of waste, grains, and certain steel industry products.[275]

For the reverse charge mechanism to apply in a domestic context, all parties involved in the transaction concerned must be taxable persons for Hungarian VAT purposes and must not be exempt from VAT.[276] In addition, the reverse tax mechanism also applies in the case of certain international transactions. In

[269] VAT Act, Sec. 259, point 19.

[270] Council Implementing Regulation (EU) No. 282/2011 of March 15, 2011, laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (the "EU VAT Implementing Regulation"), Art. 10.

[271] EU VAT Implementing Regulation, Art. 10, point 3.

[272] VAT Act, Sec. 259, point 2.

[273] EU VAT Implementing Regulation, Art. 11, point 3.

[274] VAT Act, Section 139.

[275] VAT Act, Sec. 142(1).

[276] VAT Act, Sec. 142(3).

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such cases, the transaction concerned is deemed to take place where the customer has set up its business or has a fixed establishment and VAT is payable by the customer.

4. Registration and Returns

As a general rule, all taxpayers engaged in taxable activities are required to have tax numbers.[277] In the case of a company registered with the court of registration, the tax number is automatically generated when the petition to register the company is filed with the court of registration. A private entrepreneur, however, needs to file a separate application with the tax authorities.

An exception to this rule applies in the case of certain private individual taxpayers. A private individual taxpayer — other than a private entrepreneur or a person establishing commercial relations with a taxpayer resident in another EU Member State — is not required to apply for a tax number if he/she is engaged solely in the leasing or renting of real property under the VAT Act and has not exercised the option for taxation with respect to VAT.

Taxpayers with an annual VAT liability in excess of HUF 1 million are required to file their VAT returns and pay the tax on a monthly basis. In addition, a newly established corporation is required to file monthly tax returns for the year of registration and the following year if it is started up during the tax year and has no predecessor (i.e., if it is not the result of a reorganization and is not the successor of another company).[278]

5. Input Tax and Refunds

To the extent the goods/services acquired by a taxpayer are used for purposes of the taxpayer's taxable transactions, the taxpayer is entitled to set off the following input VAT against the output VAT that the taxpayer is liable to pay:

(i) VAT due or paid with respect to the acquisition of goods or services provided or to be provided by another taxable person;

(ii) VAT due with respect to the acquisition of goods — including the intra-EU acquisition of goods — and services, including payments on account where VAT is payable by the recipient of the services;

(iii) VAT paid with respect to the importation of goods by the taxpayer or due with respect to the importation of goods where the VAT is charged by another taxable person;

(iv) VAT paid by way of advance payment; and

(v) VAT due with respect to products produced, constructed, extracted or processed by the taxpayer itself, or products purchased or imported in the course of such business where the VAT on such goods, had they been acquired from another taxable person, would not be wholly deductible.[279]

The VAT with respect to certain goods or services is not eligible for set off, most importantly:

(i) Supplies of fuel or other goods in connection with the operation of a passenger car, yacht, or motorcycle;

(ii) Supplies of residential property;

(iii) Supplies of food and beverages;

(iv) Services ancillary to the construction or remodeling of residential property;

(v) Taxi services;

(vi) Parking services;

(vii) Highway toll services;

(viii) Services provided by restaurants and other public catering services; and

(ix) Entertainment services.

In addition, as a rule, 30% of the VAT may not be deducted in connection with the following transactions:

(i) Telephone services;

(ii) Mobile telephone services; and

(iii) Internet-protocol-based voice transmission services.[280]

An important condition precedent for the set off of input tax is that the taxpayer must use the acquired goods or services in connection with its tax-generating business activity.

A further condition precedent is that the taxpayer must be in possession of a proper invoice made out to its business name.[281] For a taxpayer to be able to set off its input VAT, an invoice must show the following:

(i) The date of issue;

(ii) A sequential number that uniquely identifies the invoice;

(iii) The tax number under which the taxable person supplied the goods or services;

(iv) The customer's tax number;

(v) The full name and address of the issuer of the invoice and of the customer;

(vi) A description of the goods supplied and their quantity, or a description of the services rendered and their extent and nature, if such can be expressed in some unit of measurement;

(vii) The date of fulfillment (if different from the date of issue);

(viii) The taxable amount, the unit price of the goods or services exclusive of VAT, if this can be expressed in some unit of measurement, and any discounts or rebates if they are not included in the unit price;

(ix) The rate at which VAT is charged; and

(x) The amount of VAT payable: this should be indicated in forints, even where all the other details are expressed in another currency. In converting the amount of VAT payable to forints, the taxpayer is required to use either the

[277] Act CL of 2017, Sec. 16(2).
[278] Act CL of 2017, Schedule No. 2, point I/B.
[279] VAT Act, Sec. 120.
[280] VAT Act, Section 124.
[281] VAT Act, Sec. 127(1), point a).

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exchange rate listed as the selling rate by a credit institution authorized in Hungary to engage in money exchange operations or the exchange rate officially quoted by the Hungarian National Bank or the European Central Bank.[282]

Subject to certain special rules, additional information may be required to appear on an invoice (if VAT is payable under the reverse charge mechanism, if the taxpayer applies the cash accounting scheme, etc.).

Before deducting input VAT, a taxpayer must verify that the relevant invoice was issued by an existing VAT taxpayer, that the transaction covered by the invoice has actually taken place between the parties concerned, and that the invoice otherwise satisfies the criteria set out in the VAT Act. For example, if the transaction to which the invoice relates is not real, the corresponding input VAT may not be deducted. The right to set off VAT, however, may not be denied on grounds that are exclusively attributable to the issuer of the invoice (for example, because the issuer of the invoice did not pay VAT or did not possess the necessary manpower or resources to carry out the transaction), unless it can be established that the recipient of the invoice had actual knowledge (or should have known had it taken reasonable care) that the transaction was aimed to evade tax.

Comment: Taxpayers are expected to be cautious and take extra care when carrying out transactions that are not customary within their business or that are carried out with a new contracting party. Taxpayers are thus strongly advised to verify the invoices they receive prior to setting off the VAT charged in such invoices.

If, after setting off the input VAT, the taxpayer's VAT balance is negative (i.e., the deductible input VAT exceeds the chargeable output VAT), the taxpayer may either set off the amount of the negative balance against the output VAT chargeable during the next tax period or reclaim the amount.[283] Specifically, the amount may be reclaimed if:

(i) The taxpayer files a request to that effect in its VAT return submitted to the state tax authority; and

(ii) The amount claimed equals or exceeds, in terms of absolute value:

- HUF 1 million in the case of a taxable person that is required to submit VAT returns on a monthly basis;
- HUF 250,000 in the case of a taxable person that is required to submit VAT returns on a quarterly basis; or
- HUF 50,000 in the case of a taxable person that is required to submit VAT returns annually.

If the above limits comprise an amount accumulated over several consecutive tax periods, the taxpayer may request a refund at the earliest in the tax period during which the above thresholds, expressed in absolute terms, are reached.[284]

E. Capital Investment Tax

Except for minor stamp duties, no taxes are levied in Hungary on the establishment of a company or subsequent increases in its capital. It should be noted, however, that where a company is established or a share capital increase effected with non-monetary contributions, the transfer pricing regulations set out in Act LXXXI of 1996 on corporate income tax and dividend tax (the "CIT Act") and the VAT Act must be observed (see XIII., below).

F. Payroll Tax

Salaries are subject to the payroll tax (PT), which is collected by way of withholding as a prepayment of the tax. In addition to PT, the payment of salaries give rise to certain other taxes and contributions that are either withheld at source or payable by the employer based on the employee's gross salary.

In addition to PT, the social security contribution at a rate of 18.5% must be withheld by the employer from the employee's income.[285]

The taxes and contributions to be paid by the employer include the social contribution tax, the rate of which is 13%.[286]

Employers may grant certain fringe benefits to employees that are subject to preferential tax treatment up to an annual ceiling of HUF 450,000. Such fringe benefits may be used in restaurants or for touristic or sport purposes. Fringe benefits qualifying for preferential tax treatment are subject to further conditions.

Comment: Starting on August 1, 2023, employees may also use this amount for purchases of food products in grocery stores.

An employer is entitled to benefit from certain personal allowances deductible from its social contribution tax liability if it employs certain categories of individuals, including employees entering the job market, the handicapped, and employees returning to work after a long period of unemployment or maternity leave.

G. Transfer Tax

Subject to a few exceptions (for example, for motor vehicles and medical practices), the acquisition of movable property (i.e., property other than real property) is not subject to transfer tax.

The acquisition of real property, as well as of holdings (for example, stocks, business shares, shares in cooperatives and converted investor shares) in a real property holding company, located in Hungary is subject to transfer tax on the quid pro quo received on the transfer of the property.[287]

With one notable exception, transfer tax is payable by the buyer.[288] The exception, introduced under a regulation effective as of February 1, 2020, relates to the sale of agricultural land that is later rezoned as urban land, thereby becoming a taxable transaction (the sale of holdings in a company owning such land is treated the same way). No duty is payable if the sale is carried out at the earliest in the sixth year following the acquisition of the land.

A "real property holding company" in Hungary means an economic operator whose real property holding(s) in Hungary

[282] VAT Act, Sec. 169.
[283] VAT Act, Sec. 153/A(2).
[284] VAT Act, Sec. 186(1)–(2).
[285] Act CXXII of 2019, Sec. 25(1).
[286] Act LII of 2018, Sec. 2(1).
[287] Act XCIII of 1990, Sec. 18.
[288] Act XCIII of 1990, Sec. 27(1).

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constitute more than 75% of the total balance sheet value of its assets (exclusive of liquid assets, pecuniary claims, prepayments and accrued income, and loans), or that has a direct or indirect share of more than 75% in an economic operator (i.e., an economic operator with holdings in real property) whose real property holding(s) in Hungary constitute more than 75% of the balance sheet value of its assets (exclusive of liquid assets, pecuniary claims, prepayments and accrued income, and loans).[289]

Financial leasing contracts relating to real property, where ownership title is transferred at the end of the lease term, are also taxable.

Tax on the acquisition of holdings in a real property holding company is payable if the purchaser acquires (by itself or together with related parties) more than a 75% interest in the company.[290]

The general rate of tax on the quid pro quo for the transfer is 4%. For acquisitions of real property or capital contributions in a company with holdings in real property located in Hungary, the rate is 4% of the market value of each real property acquired up to HUF 1 billion, without any deduction for encumbrances, plus 2% of the portion of the market value over HUF 1 billion, not to exceed HUF 200 million per property. The tax rate is 90%[291] in case of sale of urbanized land. In this case, the tax base is the difference between the market value of the land at the time of acquisition and at the time of sale.

In certain circumstances, preferential rates apply if the buyer: (i) is licensed to engage in the selling of real property and at least 50% or more of the buyer's net sales revenue for the previous tax year originates from such activities; or (ii) is authorized to provide financial leasing services. The rate is 3%, if the taxpayer undertakes to resell the property within two years to a person other than an affiliated company, while the rate is 2% if the taxpayer assumes an additional undertaking so that the resale transaction will be fully executed.[292]

In addition, the preferential tax rate applies in specified circumstances to property acquisitions made by credit institutions or by regulated real estate investment companies.[293]

There are a few exemptions from the transfer tax on acquisition of real property, including the following:

(i) Upon the transfer of real property, or shares in the capital of a company with holdings in real property, located in Hungary between related companies. In case of transfer of real property, this exemption only applies if at least 50% of the net turnover of the buyer in the previous tax year was derived from the rental, operation or sale of own or leased real estate.[294].

(ii) Upon the acquisition of ownership (an ownership share) in land suitable for the construction of a residential building or rights in such land, if the party acquiring the land constructs a residential building on the land within four years of the date of submission of the contract for dutiable purposes, and the net floor space for residential use is at least 10% of the permissible building space fixed in the general zoning plan. The party acquiring the land must notify the state tax authorities regarding its intention to build a residential building by the time the order for payment of the tax becomes final.[295]

(iii) Upon the acquisition of the management rights with respect to residential property.[296]

H. Net Worth Tax

There is no net worth or net wealth tax at the national level in Hungary, but a limited net worth tax is levied at the communal level (see IV.J.3., below).

I. Small Business Tax

1. Small Business Tax

To reduce the administrative burden on micro- and small businesses, Hungary has introduced two taxation regimes that are available only to such entities.

The law defines certain entities that are allowed to elect to pay their taxes under the small business tax (KIVA) regime if they satisfy certain criteria. Companies organized in the form of public corporations are not allowed to make this election.

For a legal entity that opts to apply it, the KIVA regime will replace the corporate income tax (CIT) and the social contribution tax payment obligations.[297]

The following entities may elect to pay their taxes in accordance with the KIVA rules:

(i) Sole proprietorships;

(ii) General partnerships;

(iii) Limited partnerships;

(iv) Private limited liability companies;

(v) Private corporations;

(vi) Cooperative societies and housing cooperatives;

(vii) Forest management associations;

(viii) Bailiff's offices;

(ix) Law firms and notaries' offices;

(x) Patent agencies;

(xi) Nonresident entrepreneurs; and

(xii) Foreign persons with head offices in Hungary.[298]

To be able to make the election, a company must satisfy the following criteria:

(i) Its average number of employees during the year may not exceed 50;

(ii) Its annual turnover may not exceed HUF three billion;

(iii) Its annual balance sheet total may not exceed HUF three billion;

[289] Act XCIII of 1990, Sec. 102, point o).
[290] Act XCIII of 1990, Sec. 18(4).
[291] Act XCIII of 1990, Sec. 19(6).
[292] Act XCIII of 1990, Sec. 23/A.
[293] Act XCIII of 1990, Sec. 23/B.
[294] Act XCIII of 1990, Sec. 26(1), point t.
[295] Act XCIII of 1990, Sec. 26(1), point a.
[296] Act XCIII of 1990, Sec. 26(1), point b.
[297] Act CXLVII of 2012, Sec. 21(2).
[298] Act CXLVII of 2012, Sec. 16(1).

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(iv) Its tax identification number may not have been cancelled or suspended in the two years preceding the relevant tax year;

(v) Its fiscal year must be identical to the calendar year and its records kept in forints;

(vi) It did not own a controlled foreign corporation (CFC) in the tax year immediately preceding the relevant tax year; and

(vii) In the tax year preceding the current tax year, the taxpayer is not expected to have to make certain corporate tax base adjustments related to interest.[299]

The tax base is the balance of additions to and deductions from the equity of the taxpayer increased by staff costs. There are certain modifications to the tax base, such as dividends payable declared in the tax year, costs and expenses not incurred in the interest of the taxpayer, financial penalties, and the value of remission of debts not qualifying as bad debts are to be added to the tax base, while dividends received (due) in the tax year are to be deducted from the tax base (provided that the dividends are not treated as deducted from the pre-tax profit by the company paying the dividend). Furthermore, where a taxpayer enters into a contract (agreement) with its affiliated company, and the consideration (transaction value) fixed in that contract or agreement cannot be considered a fair market price, the tax base must be adjusted by the difference between the fair market price and the transaction value, to the amount that would have resulted from a contract (agreement) concluded with an independent party.[300]

The tax base may not be less than the amount paid to employees, i.e., tax is payable on at least the amount paid to employees.

The small business tax rate is 10%.[301]

Payers of KIVA are required to meet their advance tax assessment, declaration and payment obligations on a quarterly basis by the 20th of the month following the current quarter.[302]

2. Lump Sum Taxation

Effective as of September 1, 2022, significant changes were implemented in the small taxpayers' itemized lump sum tax (KATA) regime. From then on, only self-employed persons may elect to apply this regime. Furthermore, as from that date (with very limited exceptions), taxpayers who opt for this taxation regime may only generate revenue from private individuals. This means that in practice, KATA is reserved for private entrepreneurs who work to satisfy their personal needs, such as a small business in the beauty industry, home cleaners, and certain kinds of psychologists and doctors.

Under the KATA regime, a small taxpayer pays a lump sum monthly tax of HUF 50,000.[303]

The income of the small taxpayer is subject to a ceiling of HUF 18 million. Income in excess of this ceiling is taxed at a punitive rate of 40%.[304]

The lump sum tax is payable monthly, by the twelfth day of the month following the current month.[305]

The application of the KATA regime substitutes for the corporate income tax (CIT) and the social contributions tax. In addition, the taxpayer is also relieved from the obligation to pay personal income tax (PIT) and to make pension contributions.[306]

J. Local Taxes

1. Local Business Tax

A local business tax is payable by all entrepreneurs who carry on a permanent or temporary business activity in an establishment in the jurisdiction of the municipality concerned.[307] The term "establishment" includes, in particular, a factory, plant, workshop, warehouse, mine, oil or gas well, water well, wind farm (wind turbine), solar power plant, office, branch, agency, land, immovable property used (rented or leased) and for airline companies, airports, from where their airplanes depart.[308] The following is a summary of the local taxes on business activities.

The tax base is based on net sales revenue, less the following costs:

(i) The total original cost of goods sold (for goods ready for retail) and the value of mediated services;

(ii) Amounts paid to sub-contractors;

(iii) The cost of raw materials; and

(iv) The direct costs of basic research, applied research and experimental development claimed for the tax year unless the entrepreneur has opted to apply the tax allowance for research and development activities under the CIT Act for the tax year.[309]

Municipalities are free to determine the applicable rate, however it may not exceed 2%, and to define any applicable tax credits.[310] To attract business, some municipalities do not levy any local business tax.

A company that carries on a permanent business activity within the administrative area of two or more municipalities must allocate its tax base between the municipalities concerned.

Taxpayers are required to make advance payments of the local business tax twice a year based on the previous year tax base. The balance for the relevant year must be settled by May 31 of the following tax year.[311] The local business tax return must be filed and paid by May 31 of the year following the relevant tax year.[312]

[299] Act CXLVII of 2012, Sec. 16(2).
[300] Act CXLVII of 2012, Sec. 20.
[301] Act CXLVII of 2012, Sec. 21(1).
[302] Act CXLVII of 2012, Sec. 23(1).
[303] Act XIII of 2022, Sec. 7.
[304] Act XIII of 2022, Sec. 7(4)–(5).
[305] Act XIII of 2022, Sec. 7(3).
[306] Act XIII of 2022, Sec. 8(1).
[307] Act C of 1990, Sec. 35.
[308] Act C of 1990, Sec. 52, point 31.
[309] Act C of 1990, Sec. 39(1).
[310] Act C of 1990, Sec. 40(1), point c).
[311] Act No. CL of 2017, Schedule No. 3 Sec. II/A/1, point 2b.
[312] Act No. CL of 2017, Schedule No. 2 Sec. II/A/1, point 1a.

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Note: Pursuant to Government Decree 362/2022 (IX.26.), taxpayers can pay their local business tax in U.S. dollars or euros, rather than Hungarian forint. This is a temporary measure, which is in force for the duration of the state of emergency the Hungarian government has declared due to the Ukrainian-Russian conflict.

Starting in 2023, SMEs are granted preferential treatment in respect of the local business tax. Entrepreneurs whose income does not exceed HUF 25 million (or HUF 120 million for taxpayers engaged in commercial activity) in the tax year may choose to assess their business tax base in a simplified manner at a maximum rate of 1%. If a taxpayer's income for a given tax year does not exceed the income range limit applicable in the previous tax year, the taxpayer has no tax liability other than the payment of a one-off annual tax. For this purpose, there are applicable three income ranges:

- Up to HUF 12 million: the tax base is HUF 2.5 million;
- HUF 12 million to HUF 18 million: the tax base is HUF six million; and
- Above HUF 18 million to HUF 25 million: the taxable amount is HUF 8.5 million.[313]

Taxpayers who opt to pay local business tax at the preferential rate are not required to file a tax return.

Taxpayers in the Small Business Tax regime may choose to set their tax base for the local tax to be equal to 1.2 times their small business tax base.[314]

2. Building and Property Tax

Building and land taxes are payable by the owners of buildings/land. Maximum rates for both taxes are set under the Local Taxes Act. The maximum rate for the building tax is either 3.6% or a flat amount of HUF 1,100 per square meter.[315] For the property tax the rate is either 3% or a flat amount of HUF 200 per square meter.[316] The municipalities are free to set the rate up to these limits and even update them based on the CPI. Both taxes are due in two installments, by March 15 and September 15 of each year.

3. Other Local Taxes

Municipalities may levy certain other taxes on private individuals, such as town tax, communal tax (i.e., a tax on the net worth of real property owned by the private individual within the jurisdiction of a municipality) and tourist tax.

K. Other Taxes

In addition to the major taxes detailed above, a few other taxes are levied in Hungary.

1. Innovation Contribution

Mid-sized and large companies are required to pay an innovation contribution.[317] The tax base for the innovation contribution is the same as that for local business tax calculated without tax credits.[318] The rate of the innovation contribution is 0.3%.[319] The contribution is payable quarterly, and the tax return is filed annually.

2. Excise Tax

Tax liability arises when goods subject to excise tax are manufactured or are imported (or illegally transferred) from third countries into the European Union.[320] However, a tax payment obligation arises only at the time of the release of the goods for consumption or when a shortage of the taxable goods is established that cannot be accounted for tax-free.[321] Excise tax is payable in Hungary in relation only to energy products, tobacco, and certain alcohol products.[322]

3. Advertisement Tax

The publication of advertisements for consideration in the Hungarian language in the media, the press, outdoor advertisement carriers, real estate, vehicles, printed materials, and the internet is subject to tax.[323] The tax base is the adjusted net sales revenue derived in the tax year from the taxable activity.[324]

The rate of advertisement tax is 7.5% on the amount of the tax base in excess of HUF 100 million.

Note: For the term commencing on July 1, 2019 and ending on December 31, 2024, the rate is set at 0% and the procedural regulations suspended. Therefore, through the end of 2024, no advertisement tax applies, although the Act itself continues to be in force because it has not been repealed.

As a general rule, the advertisement tax is payable by the publisher of the advertisements.[325] The publisher must provide its client with a declaration on the invoice issued on the advertisement publication date at the latest. In the absence of this mandatory declaration, however, the advertisement tax will be payable by the party ordering the publication of the advertisements.[326] The ordering party must declare and pay tax on its advertisements on amounts exceeding HUF 2.5 million per month. If the tax is payable by the ordering party, a standard tax rate of 5% applies.[327]

4. Retail Tax

Effective as of 2020, retailers (with a few exceptions) are obliged to pay retail tax. The tax is payable by a resident or non-resident person or organization carrying on retail activity in Hungary. The taxable amount is the taxpayer's net turnover from such activities in the tax year. The tax rate is:

- On the part of the tax base not exceeding HUF 500 million: 0%;

[313] Act C of 1990, Sec. 39/A.
[314] Act C of 1990, Sec. 39/B.
[315] Act C of 1990, Sec. 16.
[316] Act C of 1990, Sec. 22.
[317] Act LXXVI of 2014, Sec. 15(1)–(2).
[318] Act LXXVI of 2014, Sec. 16(1).
[319] Act LXXVI of 2014, Sec. 16(2).
[320] Act LXVIII of 2016, Sec. 6.
[321] Act LXVIII of 2016, Sec. 7(1).
[322] Act LXVIII of 2016, Sec. 3(1), point 29.
[323] Act XXII of 2014, Sec. 2.
[324] Act XXII of 2014, Sec. 4.
[325] Act XXII of 2014, Sec. 3(1).
[326] Act XXII of 2014, Sec. 3(3).
[327] Act XXII of 2014, Sec. 5(2).

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• On the part of the tax base exceeding HUF 500 million but not exceeding HUF 30 billion: 0.1%;

• On the part of the tax base exceeding HUF 30 billion but not exceeding HUF 100 billion: 0.4%;

• On the part of the tax base exceeding HUF 100 billion: 2.7%.[328]

[328] Act XLV of 2020.

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V. Taxation of Domestic Corporations

A. What Is a Domestic Corporation?

For purposes of the corporate income tax (CIT), domestic corporations are defined as all legal entities, including partnerships, established and organized under Hungarian law. A foreign corporation that has its place of business management in Hungary also qualifies as a domestic corporation under Subsection (3) of Section 2 of Act LXXXI of 1996 on corporate income tax and dividend tax (the "CIT Act"). The term, "place of business management" means the place where the management for the operation of the business entity is located.

In addition, a trust fund managed under a fiduciary asset management contract in Hungary will be treated as a resident taxpayer.[329]

Furthermore, with the exception of an investment fund that is widely held, holds a diversified portfolio of securities and is subject to investor-protection regulation in Hungary, a hybrid entity (defined as an entity or structure that is regarded as a taxable entity under the laws of one jurisdiction and whose income or expenditure is treated as income or expenditure of one or more other persons under the laws of another jurisdiction) registered or established in Hungary is also to be considered a resident taxpayer if a nonresident organization in which the hybrid entity (by itself or together with its affiliated companies):

(i) Controls more than 50% of the voting rights directly or indirectly;

(ii) Controls more than 50% of the subscribed capital directly or indirectly, or

(iii) Is entitled to more than 50% of the after-tax profit,

and this organization falls within a fiscal jurisdiction where the Hungarian hybrid entity is liable to pay corporate tax or any other form of tax that is considered equivalent to corporate tax.[330]

B. Corporate Income Tax

1. Taxation of Worldwide Income

Under Section 3 of the CIT Act, resident taxpayers are liable to CIT on their income from both Hungary and abroad (total or worldwide tax liability). By contrast, nonresident companies are liable on their income from business operations performed through their Hungarian branches (limited tax liability). In other words, subject to some exceptions in the case of income from, or capital gains from the disposal of, real property located in Hungary or real property holding companies, Hungarian-source income of a nonresident corporation that is not attributable to a permanent establishment (PE) of the nonresident corporation in Hungary is generally not subject to CIT in Hungary.

The following resident persons are deemed to be taxpayers for CIT purposes:

(i) Business associations (including nonprofit business associations, regulated real estate investment pre-companies (i.e., companies under formation), regulated real estate investment companies and regulated real estate investment special purpose companies), groupings and European public limited-liability companies (including European holding companies), and European cooperative societies;

(ii) Cooperative societies;

(iii) Government held companies, trusts, state-controlled economic organizations, special purpose entities, and subsidiaries;

(iv) Law offices, court bailiffs' offices, patent agencies, notary's offices and forest management associations;

(v) Employee stock ownership plans (ESOPs);

(vi) Water management associations;

(vii) Foundations, public foundations, associations and public bodies (including any organizational units of such organizations vested with legal personality in the bylaws or charter document), as well as ecclesiastical legal entities, housing cooperatives, and voluntary mutual insurance funds;

(viii) Institutions of higher learning (including the institutions they have established), and student hostels;

(ix) European groupings of territorial cooperation;

(x) Sole proprietorships;

(xi) The European Research Infrastructure Consortium (ERIC); and

(x) Trusts and public-benefit trusts carrying out public service functions.

2. Accounting

a. In General

Under Hungarian accounting rules, entrepreneurs are required to prepare annual accounts each year. The annual accounts consist of a balance sheet, a profit and loss statement, and notes to the accounts.[331]

Depending on the net turnover and average number of employees, the yearly financial report of a company must be audited by an auditor.[332] In addition, some corporations must have their accounts audited because of the specific nature of their business activities. Some corporations decide to retain an auditor even though they are not required by law to appoint an auditor. The purpose of the auditor's report is to provide an independent professional report on the annual accounts confirming that the accounts truly reflect the financial and economic standing of the company. The financial report along with the auditor's report must be approved by the shareholders each year. At the same time, the shareholders determine the appropriation of after-tax profit.

[329] CIT Act, Sec. 2(6).
[330] CIT Act, Sec. 2(7) and (8).
[331] Accounting Act, Sec. 19(1).
[332] Accounting Act, Sec. 155(3).

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The approved financial report, the auditor's opinion and the shareholders' resolution must be sent electronically to the Ministry of Justice for publication at the latest by the last day of the fifth month following the cut-off date for the financial report (with the exception of corporations whose securities are admitted to trading on a regulated market of any Member State of the European Economic Area, where this deadline is the last day of the fourth month following the cut-off date for the financial report).[333]

b. Accounting Periods

A company's financial year may be different from the calendar year. If a company decides on a financial year that deviates from the calendar year, this needs to be reported to the corporate registry and/or the tax authorities.[334] Generally though, the financial year coincides with the calendar year.

c. Accounting Methods

Two comprehensive methods of accounting are recognized in Hungary: (i) the Hungarian accounting standards as set out in the Accounting Act; and (ii) the international financial accounting standards (IFRS).

As of January 1, 2017, IFRS is compulsory for companies whose securities are admitted to trading on a regulated market of any EU Member State as well as for credit institutions.

In addition, the following companies — with the exception of economic entities managing the assets of the state or municipal governments, nonprofit business associations, mutual insurance associations, pension funds, health funds and mutual aid funds — may opt for IFRS:

(i) Companies owned directly or indirectly by a parent company, if such parent company prepares consolidated annual accounts in accordance with IFRS;

(ii) Insurance companies;

(iii) Financial enterprises, payment institutions, electronic money institutions, investment firms, the central securities depository, central counterparty, stock exchange, institutions for occupational retirement provision supervised by the National Bank of Hungary, financial intermediaries and insurance intermediaries whose accounts are included — by decision of their parent company — in the consolidated financial statements prepared in accordance with IFRSs, and certain funds and fund managers; and

(iv) Companies that are subject to statutory audit.[335]

Certain "micro-companies" are allowed to prepare a simplified annual account if, on the balance sheet date in two consecutive financial years, two of the following three size-related indices do not exceed the limits indicated below:

(i) The balance sheet total does not exceed HUF 1.2 billion;

(ii) The annual net sales revenues do not exceed HUF 2.4 billion; and

(iii) The average number of employees during the financial year does not exceed 50.[336]

The Accounting Act defines the fundamental principles for the preparation of the annual accounts.

In addition, companies must define their own accounting policy based on the principles and valuation rules laid down in the Accounting Act that are consistent with the characteristics and circumstances of the company. Companies should also lay down the methods and means necessary for the implementation of the Accounting Act.[337] The accounting policy, *inter alia*, comprises, in writing, the rules, regulations and methods tailored to the company's characteristics, with a view to defining what the company considers essential, significant or insignificant from an accounting point of view, and to determining the selection and measurement criteria the company employs from among those provided for in the Accounting Act, the conditions under which to adopt them, and the circumstances in which the applied policy should be revised.

The accounting policy also contains regulations and procedures governing:

(i) The taking and keeping of an inventory of assets and liabilities;

(ii) The valuation of assets and liabilities;

(iii) The costing system (this is not compulsory for certain companies); and

(iv) The cash handling policy.[338]

Where net sales revenue for any financial year (less the cost of goods sold and the value of mediated services) exceeds HUF 1 billion, or the total of costs broken down by cost category exceeds HUF 500 million, as of the start of the following financial year, the cost of self-constructed assets and services supplied is to be determined using the post-calculation method prescribed by the internal regulations relating to the costing system. Under the post-calculation method, a company calculates the cost of self-constructed assets using all costs collected throughout the manufacturing process, as of the balance sheet cut-off date. The specific formula for this calculation varies based on the nature of the business and is set out in the company's internal accounting policy. No forward exemption will be granted from this obligation in any circumstances, even if the relevant conditions are fulfilled.[339]

The policy on handling cash includes, inter alia, provisions for: procedures for conducting financial transactions (in cash or through bank accounts); personnel and infrastructure requirements for handling money; rules of liability; transactions executed using liquid assets kept in cash or in bank accounts (for example, restrictions on the use of cash and when cash must be deposited in a bank account); transaction codes and procedures for movements of money; the maximum amount of the daily closing cash balance; procedures for checking and auditing cash stocks (and the frequency of such audits); requirements for cash delivery; documentation rules pertaining to cash handling; and rules relating to transaction records and registers.

[333] Accounting Act, Sec. 153(1).
[334] Accounting Act, Sec. 11.
[335] Accounting Act, Sec. 9/A.
[336] Accounting Act, Sec. 9(2).
[337] Accounting Act, Sec. 14(4).
[338] Accounting Act, Sec. 14(5).
[339] Accounting Act, Sec. 14(7).

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The principles defined by the Accounting Act include:

(i) The going concern principle: drawing up the financial report and the accounting records should be based on the assumption that the company has the capacity to sustain its operations in the foreseeable future and the ability to continue its activity, and that the termination of, or a considerable reduction in, the operations is not expected for any reason.

(ii) The completeness principle: the company is required to keep accounts of all economic events in the financial report, as well as their effect on the company's assets, liabilities, and profits. This includes economic events pertaining to the financial year in question that became known after the balance sheet date but before the date of closing, as well as those generated by the economic events of the financial year ending on the balance sheet date that had not yet taken place prior to the balance sheet date but became known prior to the closing date of the balance sheet.

(iii) The "true and fair view" principle: assets shown in the books and contained in the financial report must be such that they can be found and verified as in fact being in existence, tenable, and verifiable.

(iv) The clarity principle: the accounting records and the financial report are to be prepared in a concise, comprehensible form in accordance with the Accounting Act.

(v) The consistency principle: consistency and comparability is to be provided for with respect to content and formal requirements, and the financial report and underlying accounting records.

(vi) The continuity principle: the opening data for a financial year must be identical to the corresponding closing data for the previous financial year. In consecutive years, the valuation of assets and liabilities, and the assessment of profit or loss may be altered only if specifically allowed by the Accounting Act.

(vii) The matching principle: in determining the profit or loss for a certain period of time, the income recognized for a given period of activity and the costs (expenditures) directly associated to such income are to be taken into account, regardless of financial settlement. The income and costs must relate to the period in which they were incurred for economic purposes.

(viii) The prudence principle: no profit is to be recognized where the financial realization of the revenues and certain items of income are uncertain. In determining the profit or loss for a year, foreseeable liabilities and potential losses are to be taken into account and covered by provisions, even if such liabilities or losses become apparent only between the closing date of the balance sheet and the date on which the balance sheet is drawn up. Depreciation impairment losses are to be accounted for, regardless of whether the income statement for the year shows a profit or a loss.

(ix) The grossing-up principle: income and costs (expenditures), and receivables and liabilities may not be set off against one another.

(x) The principle of valuation on an item-by-item basis: assets and liabilities are to be entered and valued item-by-item in the course of bookkeeping and preparation of the report.

(xi) The accrual principle: the consequences of economic events concerning two or more financial years are to be recognized under the income and costs of the period in question in the proportion in which they are incurred between the underlying period and the accounting period. For example, if a membership fee is for two years and the whole fee is payable in advance, in preparing the balance sheet, the amount paid must be split between the two years.

(xii) The substance-over-form principle: in the financial report and the relevant accounting records, economic events and transactions are to be shown and accounted for so as to reflect their economic substance.

(xiii) The materiality principle: for purposes of the financial report, information is material if its omission or misstatement could influence — within reason — the economic decisions of users taken based on the financial report.

(xiv) The cost-benefit principle: the usefulness of any information published in the financial report must be commensurate with the costs of producing that information.[340]

d. Inventory

Inventory is reported as a current asset on a company's balance sheet, in the amount paid to obtain the merchandise, not at its selling price (subject to one exception, detailed below).

Inventory includes the following items:

(i) Raw materials and consumables;

(ii) Work-in-progress and intermediate goods;

(iii) Rearing animals, hogs, and other livestock;

(iv) Finished products;

(v) Goods; and

(vi) Payments on account for inventory.[341]

The cost of obtaining (by purchase or manufacture) inventory items means the expenditure required for the acquisition of the inventory item incurred, before commissioning or delivery of the item to the warehouse, that may be attached to the inventory item in question. The cost (original cost) includes: the purchase price reduced by any discounts and increased by any premium; the costs and charges paid to intermediaries, or for the delivery, loading and commissioning services supplied in connection with the purchase, commissioning and delivery of the inventory item to the warehouse; any commission; taxes and similar levies; and customs charges.

[340] Accounting Act, Secs. 15–16.
[341] Accounting Act, Schedule No. 1.

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In addition to the above, if related closely to the acquisition of the inventory item, the cost will also comprise:

(i) Duties;

(ii) VAT charged that is non-deductible;

(iii) Administrative and service charges imposed by authorities;

(iv) Other administrative, service and procedural charges (such as environmental product charges and experts' fees); and

(v) Costs and fees arising in connection with the credit facility used for the purchase of the inventory item.[342]

The exception (referenced above) to the rule that inventory is generally reported at its cost rather than its sale price applies when the cost (original cost) or book value of purchased inventory (raw materials, goods) is substantially and permanently higher than its actual market value known on the balance sheet closing date. In these circumstances, inventory must be entered in the balance sheet at its actual market price. If, on the other hand, the cost (production value) or book value of self-constructed assets (work-in-progress, semi-finished and finished products, and livestock) is substantially and permanently higher than the sale price known and expected on the balance sheet closing date, the assets must be entered in the balance sheet at their sale price as reduced by the costs expected to be incurred and increased by potential subsidies. The adjustment of the value of inventory is accounted for as an impairment loss.[343]

In addition, the cost of purchased inventory and the cost (production value) of self-constructed assets must be entered in the balance sheet at a reduced rate if: the inventory does not comply with the relevant rules (standards, transport requirements, technical specifications, etc.) or with its original purpose; the inventory has been damaged; the utilization or sale of the inventory has become doubtful; or the inventory has become superfluous. In such cases, for the balance sheet to give a true picture of the financial standing of the company, the value of the inventory must be reduced to correspond with its actual utility or market value, and the difference must be accounted for as an impairment loss.[344]

If the market value of inventory is substantially and permanently higher than its book value, the impairment loss previously written off by such difference must be reversed. However, after the impairment loss is reversed, the book value of the inventory may not exceed the initial cost value.[345]

e. Reserves

Companies are required to set aside provisions out of pre-tax profits, to the extent necessary to cover payment liabilities towards third persons that originate from past and current transactions and contracts (including, in particular, guarantee commitments prescribed in the relevant legislation, contingent liabilities, commitments and environmental protection obligations) and that, on the balance sheet date, are assumed or sure to be incurred, but have amounts and due dates that are uncertain, and with respect to which the company has not otherwise provided the required cover.

Companies may also elect to set aside provisions to cover contingent, major and recurrent liabilities (in particular, maintenance and upkeep costs, restructuring costs, and payments related to environmental protection obligations) that, on the balance sheet date, are assumed or sure to be incurred in the future but have amounts and dates that are uncertain, and cannot be shown under accrued expenses and deferred income.

Companies are, however, not allowed to set aside provisions for expenses regularly and continuously incurred in the course of their normal business activity.[346]

As explained in a., above, the financial report of a company also includes notes on the accounts. The amounts of the various provisions are required to be itemized in such notes. In addition, if the amount of any particular provision substantially differs from that of the previous year, the reasons for the difference must be explained.

Provisions do not affect the tax base since, on the one hand, the costs claimed for the tax year on account of provisions (and amounts increasing provisions) set aside for prospective obligations and forward expenses increase the tax base,[347] while, on the other, the amount shown as income as a result of the appropriation of the provisions for prospective obligations and for forward expenses decreases the pre-tax profit.[348]

3. Calculation of Gross Income

a. In General

For resident and nonresident taxpayers alike, the corporate tax base is the pre-tax profit as adjusted in accordance with the CIT Act.[349] The pre-tax profit or loss is assessed based on the financial statement prepared in accordance with the Accounting Act.

Net sales income (including income from imports and exports) as well as capitalized self-produced assets constitute the business income of a taxpayer.

Net sales income comprises the consideration, excluding VAT, received for the sale of inventory, whether purchased or self-produced, and for services supplied during the period of contractual performance in the financial year, as increased by any price support or premium and reduced by any discounts.[350]

Own performance capitalized is the sum of: (i) the capitalized value of self-constructed assets; and (ii) the difference between the beginning and ending balance of self-constructed inventory.[351]

In addition to net sales income and the value of capitalized self-produced assets, business income includes certain other income that arises in the course of regular operations (business activity), in particular:

(i) Revenue related to insurance settlements;

[342] Accounting Act, Sec. 47(1)–(2).
[343] Accounting Act, Sec. 56(1).
[344] Accounting Act, Sec. 56(2).
[345] Accounting Act, Sec. 56(4).
[346] Accounting Act, Sec. 41(1)–(3).
[347] CIT Act, Sec. 8(1), point a).
[348] CIT Act, Sec. 7(1), point b).
[349] CIT Act, Sec. 6(1).
[350] Accounting Act, Sec. 72(1).
[351] Accounting Act, Sec. 76(1).

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(ii) Fines, penalties, default interest, demurrage, late fees, fixed recovery costs, compensation and restitutions received; and

(iii) Receivables previously declared irrecoverable and written off as credit losses for the previous financial year(s), when received.[352]

b. Capital Gains

Capital gains are taxable income and are included in pre-tax profit, calculated in accordance with the Accounting Act.

However, in certain circumstances, capital gains may be deducted from the pre-tax profit thus reducing the tax base:

(i) Capital gains from the sale of intangible assets embodying rights to royalties (other than notified intangible assets),[353] including those eliminated from the books shown as non-monetary, in-kind contributions (the margin between the proceeds from the sale and the expenses claimed) in the amount transferred from the profit reserve to the tied-up reserve during the tax year, and shown on the last day of the tax year as tied-up reserve.[354] This means that the tax base may be reduced in the case of an unnotified intangible asset, if the profit from the sale of the asset is reported as tied-up reserve (by transferring it from the profit reserve). The taxpayer may then decrease its tax base by the value of the tied-up reserve. A condition precedent for this tax base reduction is that the taxpayer must use the reserve for the purchase of a new intangible asset embodying rights to royalties.

(ii) Capital gains from the sale of notified shares[355] recognized for the tax year. Additionally, capital gains recognized for the tax year as a result of the retirement of notified shares from the records and recorded as non-monetary, in-kind contributions in excess of the amount of expenses claimed (reduced in both cases by the expenses claimed in connection with reversing goodwill) may be deducted on condition that the taxpayer (including any predecessor) has previously shown the share in question as part of his or her assets for at least one year. Any value readjustment claimed during the tax year in connection with the notified share in question is also included.[356]

(iii) Capital gains from the sale of notified intangible assets, including those eliminated from the books and recorded as non-monetary, in-kind contributions (i.e., the margin between the proceeds and the expenses claimed), provided the taxpayer reported such assets on its balance sheet for a period of at least one year prior to their sale and did not apply the tax base reduction for the same assets in the year preceding the year when the assets were notified to the tax authorities.[357]

(iv) Capital gains recognized during the tax year from shares transferred under a preferential exchange of shares by a member (shareholder) of an acquired company, if the taxpayer wishes to claim this allowance; a taxpayer choosing to claim this allowance must keep separate records of all shares acquired as part of the preferential exchange of shares.[358]

Example:

Purchase/ Sale	Intangible Asset	Purchase/ Sales Price (HUF)	Notified?	Does This Reduce the Tax Base?
Purchase March 5, 2012	Intangible Asset "A"	100,000	No	
Sale June 6, 2012	Intangible Asset "A"	120,000		Yes, by HUF 20,000[359]
Purchase January 8, 2013	a) Intangible Asset "A" b) Intangible Asset "B"	90,000 90,000	Yes Yes	
Sale April 1, 2014	a) Intangible Asset "A" b) Intangible Asset "B"	95,000 95,000		No[360] Yes, by HUF 5,000[***]

c. Dividend Income

Corporate profits (and profit distributions) are subject to a partial integration system in Hungary. Although dividends are included in pre-tax profits, dividend income received or due during the relevant year is deducted from the tax base, unless

[352] Accounting Act, Sec. 77(2).

[353] 'Notified intangible asset' means the acquisition or production of intangible assets embodying rights to royalties (intellectual products, rights) provided that the taxpayer notifies the tax authority concerning the acquisition of such assets within 60 days of the date of acquisition or production.

[354] CIT Act, Sec. 7(1), point c).

[355] A "notified share" means a shareholding of at least 10% in the capital of a legal person established under Hungarian law as well as any later increase in such share (other than an increase in the value of such share) or in any non-resident entity (other than a controlled foreign company or CFC), provided the taxpayer notifies the tax authority concerning the acquisition of the share within 75 days of the date of acquisition.

[356] CIT Act, Sec. 7(1), point dz).

[357] CIT Act, Sec. 7(1), point e).

[358] CIT Act, Sec. 7(1), point h).

[359] At the same time as reducing the tax base, the taxpayer transferred the profit from the sale of Intangible Asset "A" to the tied-up reserve.

[360] Since the taxpayer purchased the notified intangible asset "A" for HUF 90,000 by using the tied-up reserve, and then sold it after one year for HUF 95,000, the profit from the sale of the asset cannot reduce the tax base, because the tax base reduction has already been applied for the same asset in the tax year immediately preceding the year in which the purchase of the asset was notified to the tax authority.

[***] Since asset "B" is different from asset "A," and was purchased from the tied-up reserve, the profit from the sale of asset "B" reduces the tax base, because the tax base reduction was applied for a different asset.

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the dividends originated from a controlled foreign company (CFC).[361]

Example: If a Hungarian company receives a dividend from its U.S. subsidiary, then the dividend is included in the profit and loss statement of the Hungarian company and is part of its pre-tax profit. However, in calculating the tax base for purposes of determining its CIT liability, the Hungarian company may decrease the pre-tax profit by the amount of the dividend received.

In addition to dividends received from CFCs not being deductible from the pre-tax profit, the pre-tax profit of a Hungarian company is increased by the amount of profit after tax shown for the last day of the tax year of the CFC from non-genuine arrangements or a series thereof, less any dividend paid out, to the extent generated through assets and risks which are linked to significant people functions carried out by the taxpayer, provided that the resulting amount is positive.[362]

4. Business Expenses

a. In General

As a general rule, in calculating the pre-tax profit of a company, its income is reduced by all business expenses connected with or pertaining to the enterprise. General business expenses include: (i) material costs; (ii) staff costs; (iii) depreciation; and (iv) certain other operating charges.

Material costs include the value of raw materials purchased and used, the value of services used (purchased) including any non-deductible value added tax (VAT), the value of other services (such as administrative and service charges, including bank costs), the original cost of goods sold, and the value of services rendered.[363] (For these purposes, "the value of services used" by the taxpayer includes the cost of material-and non-material-type services in the amount as invoiced, paid and agreed upon, while "the value of services rendered" by the taxpayer includes the cost of services purchased and sold in an unaltered state at the time of sale.)

Staff costs include wages and salaries paid to employees (including compensation paid for personal services rendered by the owner of the company, as well as other employee benefits and contributions on wages and salaries).[364]

Other operating charges include:

(i) Settlements and other accounted payments (including any non-deductible VAT) paid or to be paid in connection with insurance events that occurred before the balance sheet date and that became known before the balance sheet date;

(ii) Fines, penalties, default interest, demurrage, late fees, fixed recovery costs, compensation, restitutions paid or recognized and accounted for as payable before the balance sheet date, that were charged for periods preceding the balance sheet date; and

(iii) Any non-repayable grant or subsidy provided to offset costs (expenditures).[365]

Specific types of expenses deducted from income are described in further detail below.

b. Organizational Expenses

Organizational expenses may be either written off in full in the year in which they are incurred or capitalized and written off over a period of time not exceeding five years. The capitalized value of formation/restructuring expenses consists of the costs incurred in connection with starting up a company and commencing operations, including the cost of any major expansion, restructuring or reorganization — other than capital expenditure on renovation — that is likely to be recovered following establishment or restructuring. This also covers expenses relating to the introduction of a quality assurance system.[366]

c. Travel and Entertainment

Travel and entertainment expenses, along with the associated taxes, are deductible if they are incurred in connection with the business activity of the company. Under Hungarian Law, "entertainment" includes hospitality (food and beverages) provided during a business, official, trade, diplomatic or religious event in connection with the activities of the provider of the entertainment or during state and church festivities, and associated services (travel, accommodation, programs, etc.) provided in connection with the event. However, the above definition does not apply where there is any evidence, direct or circumstantial, found in the documents and circumstances pertaining to the services given (arrangements, advertising, marketing, route, destination, place and date of stay, ratio of actual trade or religious program in recreational programs, etc.) to suggest any violation of the intent and purpose of the law.[367]

d. Interest and Royalties

Interest expenses not in excess of the amount allowable under the thin capitalization rules (see 5.a., below) are deductible. Interest paid includes:

(i) Interest paid or payable on liabilities arising from loans and credits and from the issue of bonds and debt securities shown under long-term or short-term liabilities, and on bills payable, with the exception of interest recognized and included in the cost of assets;

(ii) Interest paid or payable on subordinated liabilities (subordinated loan capital);

(iii) Losses realized in the form of the difference between the net value and the book value of investment units when sold or redeemed;

(iv) Interest expense with respect to actual reverse transactions and collateralized repurchase agreements, in the form of the difference between the selling price of assets subject to a forward repurchase obligation shown under liabilities and the repurchase price shown under receivables, and in

[361] CIT Act, Sec. 7(1), point g).
[362] CIT Act, Sec. 8(1), point f).
[363] Accounting Act, Sec. 78(1).
[364] Accounting Act, Sec. 79(1).
[365] Accounting Act, Sec. 81(2).
[366] Accounting Act, Sec. 25(3).
[367] PIT Act, Sec. 3.

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the form of the amount of lending commission on securities borrowed; and

(v) The full amount of losses on interest hedging (futures, option, swap and spot) transactions concluded by the balance sheet date, or the commensurate portion of such losses on transactions not concluded by the balance sheet date (excluding options) in an amount up to the commensurate portion of the profit on the hedged transaction.

Royalties are also deductible. However, the method of reporting royalties on the balance sheet depends on various factors, the most important of which is the way in which the royalty is paid. There are two fundamental ways to pay royalties. To take a publishing company as an example: (i) the company can pay royalties on a percentage basis calculated on the total revenue generated from the sale of the books; or (ii) it can pay royalties irrespective of the number of books sold.

In scenario (i), royalties are not part of the cost of the books, since the royalties are associated with the sale of the books and are calculated as a percentage of the revenue generated therefrom. Consequently, in this case, the royalties are part of the sale costs to be reported as staff costs on the profit and loss statement.

In scenario (ii), the company pays the royalties as a lump sum before the books are published. If the company intends to use the rights concerned over more than one year or in relation to more than one book, the rights must be capitalized as an intangible asset and depreciated over their term of use. In the event the company uses the rights only in relation to one book in one year, the royalties will be a part of the direct cost of the books.

e. Taxes

Taxes related to the purchase of materials or the provision of services, as well as those related to salary and other staff costs, may be deducted.

f. Depreciation and Amortization

Different methods of calculating depreciation apply for accounting and CIT purposes. Ordinary and extraordinary depreciation calculated in accordance with the Accounting Act is added to the pre-tax profit. However, depreciation calculated in accordance with the provisions of the CIT Act decreases the tax base.

Under the CIT Act, the rates of depreciation are as follows:

(i) Buildings: 2%, 3% or 6%, depending on the life span of the building, with the lowest depreciation rate applying to long-term structures, and the highest depreciation rate applying to short-term structures. A single rate of 15% applies to film and motion picture industry buildings.

(ii) Other structures, such as roads, bridges, power lines: the rate ranges between 2–15%, with an average of around 5%.

(iii) Plantations: the rate ranges between 4% to 15% (depending on the crop grown as noted below).

Categories	Depreciation Rate
Group 1: apple, pear, quince, medlar, cherry, sour cherry, plum, grape, viniculture, almonds, hazelnuts	6%
Group 2: peach, apricot, gooseberry, currant, hop, fruit orchard, willow plantation	10%
Group 3: asparagus, raspberry, blackberry, horse radish	15%
Group 4: walnut, chestnut	4%
Group 5: other plants	5%

(iv) Machinery, equipment, furniture, vehicles and breeding stock: the general depreciation rate is 14.5%, with exceptions for vehicles, which are depreciated at a rate of 20%, and certain specified equipment (such as computers, pressing tools, machine tools, lathes, drills, etc.), which are depreciated at a rate of 33%. There is also a rate of 10% for machinery in the waste management industry and a rate of 7% for water utility equipment.

g. Deductions Relating to Research and Development

Provided certain conditions are fulfilled, directly incurred research and development (R&D) costs reduce the CIT base if the R&D activity is connected to the business activity of the company concerned.[368] As explained in II.A.2.b.(2), above, R&D costs incurred by a related enterprise of the taxpayer may also be deducted, subject to certain conditions.

h. Obsolete Equipment

The cost of a tangible asset less the residual value estimated for the end of the useful life of the asset is to be distributed over the number of years for which the asset is expected to be used.[369] Also, the Accounting Act allows the revaluation of equipment on the same terms as apply to the revaluation of inventory. This will then be properly reflected in the pre-tax profit reported in the profit and loss statement. However, unless this process is properly documented, the book value of such an asset increases the pre-tax base.

i. Charitable Contributions

Charitable contributions made to an organization recognized as a public-benefit organization reduce the tax base provided the taxpayer has obtained a certificate issued for tax purposes by the public-benefit organization. The certificate must include the names of the public-benefit organization and of the taxpayer, and their registered offices and tax numbers, as well as the amount donated and the purpose for which the donations were made.

[368] CIT Act, Sec. 7(1), points t) and w).
[369] Accounting Act, Sec. 52(1).

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j. Capital Losses

Profits or losses from operating activities as well as profits or losses on financial transactions are reflected in pre-tax profits. In general, capital losses (i.e., the negative difference between the sale price and the book value of the investment) must be reported as expenses when they arise from financial transactions. However, capital losses reported as expenses for the tax year in connection with shares in a CFC are added back to the tax base.

k. Casualty Losses

Casualty losses are reflected in the profit and loss statement as extraordinary depreciation. Extraordinary depreciation applies in relation to intangible and tangible assets if the value of such assets falls permanently as a consequence of damage or destruction, or if the assets cannot be used at all.[370]

l. Reserve Accounts

In addition to the items listed in 2.e., above, any additional payments made by the shareholders to cover losses of a company are to be reported as tied-up reserves.[371]

m. Bad Debts

A debt claim that is proved to be irrecoverable can be written off, subject to certain conditions.

n. Inventory Write-Downs

The same rule applies with respect to the write-down of inventory as applies with respect to the write-down of tangible assets (see 2.d., above).

o. Rents

Rent qualifies as a material cost and thus decreases pre-tax profit.

5. Adjustments to Pre-Tax Profit

The taxable base is determined by reference to the pre-tax profit as shown in the financial statement, as adjusted. The adjustments concerned either increase or decrease the pre-tax profit, as described in further detail below.

The calculation of the CIT liability can be illustrated by the following example:

Example: A company's pre-tax profit is 100,000. Depreciation calculated under the Accounting Act is 3,670, while depreciation under the CIT Act is 3,550. A penalty of 45 was levied on the company due to late payment of taxes on salary. The company decided not to take any legal action to collect a long overdue claim of 230 against one of its customers and cancelled the debt. The company gave 375 for charitable purposes (to a public benefit organization) without assuming a commitment to make such donations in the future. The company received a dividend of 600 from its Hungarian subsidiary. Finally, the company spent 250 on auditing its security policy, but the audit was insufficiently documented to establish that it was conducted for business purposes.

The company's CIT liability will be calculated as follows:

Calculation of Corporate Tax		
		Thousand HUF
	Pre-tax profit as reported in the profit and loss statement	**100,000**
−	**Tax base deductions:**	**4,225**
−	Depreciation calculated under the CIT Act	3,550
−	Dividend received from Hungarian subsidiary	600
−	20% of one-time donation provided to a public benefit organization	75
+	**Tax base additions:**	4,195
+	Depreciation calculated under the Accounting Act	3,670
+	Penalty	45
+	Costs incurred outside the business activity of the taxpayer	250
+	Debts cancelled during the tax year and not treated as irrecoverable	230
=	Tax base	99,970
=	**CIT LIABILITY**	**8,997.3**

a. Additions to Pre-Tax Profit

The most common items that increase a company's tax base are:

(i) Ordinary and extraordinary depreciation calculated under the Accounting Act (conversely, depreciation calculated under the CIT Act reduces the tax base).

(ii) Penalties and fines levied pursuant to a legally binding resolution.[372] For purposes of preparing the profit and loss statement, penalties and fines are to be deducted from business income. However, they are not recognized for purpose of reducing the CIT base and must therefore be added back to the pre-tax profit.

(iii) Costs and expenses not incurred in the interest of the company's business activity (see below). Such costs and expenses include:[373]

[370] Accounting Act, Sec. 53(1).
[371] Accounting Act, Sec. 38(1).
[372] CIT Act, Sec. 8(1), point e).
[373] CIT Act, Schedule No. 3 Sec. A).

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• The consideration (whether in full or in part) for a service in excess of HUF 200,000 (VAT excluded), if — based on evidence of the prevailing circumstances (such as the taxpayer's business activities, income, and the type and value of the service) — it is determined beyond a reasonable doubt that use of the service is contrary to the requirements of reasonable management.[374] In practice, this means that, for a service in excess of this threshold, a company is required to have a written agreement with the service provider so that, if the tax authorities challenge the business need for the service, the company has a written document to substantiate the specific service provided.

• The adjusted book value of a missing intangible or tangible asset, if it is determined beyond a reasonable doubt that the shortfall would not have occurred if the asset was properly cared for (particularly, with regard to the asset's physical attributes, the value of the asset, the physical storage conditions, the terms and conditions of the contract, and the special characteristics of the activity unique to the industry) and if the taxpayer — from the perspective of the requirements of reasonable management — failed to act to the extent of its powers to mitigate losses and/or shortages, for example to recover the loss or to prevent its recurrence.[375]

• Undocumented obsolete equipment. For the book value of a tangible asset to be recognized as a cost incurred in connection with the business activity, the fact of the retirement of the asset and the reasons for its retirement must be supported by credible documentation.[376]

• Consideration paid to a CFC, unless the taxpayer is able to prove that the payment serves the purpose of its business operations (see XIV.C., below).

• Expenses claimed and reported under receivables that cannot be enforced in court or under barred claims.[377]

• Certain charitable contributions. Charitable contributions paid to organizations that are recognized as public-benefit organizations reduce the tax base subject to certain conditions (see 4.i., above). However, the following contributions are to be added back to pre-tax profit:[378]

— The book value of any grant or support provided for reasons other than a donation by the taxpayer (other than to a public-benefit organizations that may deduct both donations and non-donated grant or support) without obligation of repayment;

— Non-repayable liquid assets and assets provided for no consideration during the tax year;

— Debts assumed by the taxpayer for no consideration and deducted from the pre-tax profit for the tax year;

— The direct cost of services rendered for no consideration during the tax year; and

— VAT charged with respect to the above benefits and reported under expenses, if:

• The benefit is provided to a foreign national or a nonresident entity whose head office is located abroad; or

• The taxpayer does not have a statement from the recipient in its possession stating that its pre-tax profit for the tax year when the benefit was provided would not be negative without the income this benefit represents, as verified following the completion of its annual account by means of a statement;

• The direct costs of R&D activities, if the activities are not connected with the taxpayer's business operations or gainful activity.[379]

(iv) Interest expenses in excess of the amount allowable under the thin capitalization rules. If the liabilities of the company (excluding debt owed to financial institutions and after taking into account the amount of accounts receivable and accounts payable) are in excess of three times the company's equity, the interest on the excess increases the CIT base.[380] It should be noted that this is the case irrespective of how the interest was accounted for in the annual accounts prepared under the Accounting Act, and of whether the debt is related or unrelated party debt.

In addition, effective as of January 1, 2020, special rules were implemented regarding exit taxation in line with Council Directive (EU) 2016/1164 of July 12, 2016, laying down rules against tax avoidance practices that directly affect the functioning of the internal market. Accordingly, the amount equal to the market value of the transferred assets, at the time of exit of the assets, less their value for tax purposes is to be added to the tax base in case of a transaction qualifying as an exit.[381]

b. Deductions from Pre-Tax Profits

In addition to the deductions discussed under 4., above, the most common deductions from pre-tax profit include losses carried forward and the royalty allowance, as discussed in (1) and (2), below, respectively.

(1) Loss Carryforward and Carryback

To prevent tax evasion (for example, via the purchase of a company with large accumulated losses with the purpose of using the accumulated losses of that company to reduce the tax base of the acquiring company), certain restrictions were introduced on the deductibility of losses carried forward.

Unused losses may be carried forward from the year in which they were incurred to the subsequent five tax years.

[374] CIT Act, Schedule No. 3 Sec. A), point 4.
[375] CIT Act, Schedule No. 3 Sec. A), point 5.
[376] CIT Act, Schedule No. 3 Sec. A), point 6.
[377] CIT Act, Schedule No. 3 Sec. A), point 10.
[378] CIT Act, Schedule No. 3 Sec. A), point 13.
[379] CIT Act, Schedule No. 3 Sec. A), point 15.
[380] CIT Act, Sec. 8(1), point j).
[381] CIT Act, Sec. 16/A.

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Losses carried forward from previous years may be applied by the taxpayer to decrease the tax base by up to 50%.[382]

In the case of the transformation of a company, the legal successor may only use the losses carried forward by the legal predecessor if the member(s) or shareholder(s) (or any affiliated undertaking thereof) acquiring a direct or an indirect majority influence in the successor had the same influence in the predecessor prior to the transformation. In addition, the successor must derive income from at least one activity carried on by the predecessor in the two tax-year period following the transformation.[383] The above conditions do not apply if the taxpayer is terminated without legal succession within two tax years of the transformation or if the activity of the predecessor was concerned exclusively with asset management.

The successor in title must first use the negative tax base of the tax year in which the merger took place to reduce the pre-tax profit of that tax year; any excess may be carried forward to subsequent years.

The losses assumed during the transformation may be used by the successor for each tax year following the transformation. The amount of loss used, however, must be proportionate to the income earned from the continued activity from which the loss arose. This is calculated by multiplying the loss amount by a ratio comprised arrived at by dividing the income generated from the continued activity by the successor company in the tax year concerned by the average income generated from that same activity over the three tax years prior to the transformation.[384]

In the case of a buy-out, the bought-out company may only use losses brought forward from previous years if the member acquiring a direct or indirect majority influence in the bought-out company was in an affiliated relationship with the taxpayer continuously during the period of two tax years prior to the acquisition. Notwithstanding this limitation, losses brought forward from previous years may be used if the bought-out company or the member acquiring a majority influence in the bought-out company is a company listed on the stock exchange, or if the bought-out company continues to carry on its activity without changing its nature significantly in the two tax years following the acquisition of the majority influence and derives income from this activity in both those tax years. However, the conditions regarding the continuation of the activity do not apply if the taxpayer is terminated without legal succession within the two tax-year period following the acquisition.[385] The loss carryforward assumed during the buy-out may be used by the successor for each tax year following the acquisition of the majority influence. The amount of loss used, however, must be proportionate to the income earned from the continued activity from which the loss arose. This is calculated by multiplying the loss amount by a ratio arrived at by dividing the income generated from the continued activity by the successor company in the tax year concerned by the average income generated from that same activity over the three tax years prior to the acquisition.[386]

Losses may not be carried back.

[382] CIT Act, Sec. 17(1).
[383] CIT Act, Sec. 17(8).
[384] CIT Act, Sec. 17(8a).
[385] CIT Act, Sec. 17(9).
[386] CIT Act, Sec. 17(9a).

(2) Royalties Received by a Hungarian Entity

Subject to certain conditions, 50% of the royalty income received by a Hungarian entity may be applied to reduce its tax base. The cap on this tax base reduction is 50% of pre-tax profit.[387]

6. Capital Expenditure

Capital expenditure is treated as an investment under the Accounting Act. An investment is defined as the "purchase, creation and production of a tangible asset, commissioning of a purchased tangible asset, the activities performed up to the time when the asset is placed into operation (shipping, customs formalities, mediation, foundation work, commissioning, and all activities performed in connection with the acquisition of the asset, such as planning, preparations, execution, arranging a loan and obtaining an insurance policy, etc.)."[388] In addition, any operation to expand, convert or transform an existing tangible asset, or to increase the useful life and/or capacity of an existing tangible asset, is also included in this category.

For accounting purposes (i.e., for purposes of determining the pre-tax profit calculated in accordance with the Accounting Act), a company is required to determine the expected useful life and residual value of an investment, and depreciate the asset concerned over its expected useful life, taking into consideration its residual value. Depreciation calculated in accordance with the Accounting Act, thus decreases the pre-tax profit but increases the tax base. Conversely, depreciation calculated in accordance with the CIT Act (see V.B.4.f., above) reduces the tax base.

A company may elect to depreciate capital expenditure of HUF 200,000 or less in one lump-sum on the commencement of the use of the asset concerned.[389]

The concept of a hybrid mismatch (like exit taxation) was introduced with effect from January 1, 2020, in an attempt to harmonize Hungarian legislation with EU rules.[390] Thus, the CIT Act now provides that, to the extent a hybrid mismatch results in a double deduction, the deduction will be allowed only in the Member State in which the relevant payment has its source. Likewise, to the extent a hybrid mismatch results in a deduction without inclusion, the Member State of the payer will deny a deduction for the payment.[391] A hybrid entity qualifying as a resident taxpayer is required to assess its taxable amount so that it excludes the amount that is subject to corporate tax

[387] CIT Act, Sec. 7(1), point s).
[388] Accounting Act, Sec. 3(4), point 7.
[389] Accounting Act, Sec. 80(2).
[390] A 'hybrid mismatch' means a situation between a taxpayer in one Member State and an associated enterprise in another Member State or a structured arrangement between parties in Member States where the following outcome is attributable to differences in the legal characterization of a financial instrument or entity:

(a) a deduction of the same payment, expenses or losses occurs both in the Member State in which the payment has its source, the expenses are incurred or the losses are suffered and in another Member State ('double deduction'); or

(b) there is a deduction of a payment in the Member State in which the payment has its source without a corresponding inclusion for tax purposes of the same payment in the other Member State ('deduction without inclusion').

[391] CIT Act, Sec. 16/B.

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liability under the CIT Act as well as any other amount that is subject to liability under the tax laws of another fiscal jurisdiction to corporate tax or any other form of tax that is considered equivalent to corporate tax (provided the hybrid entity is able to prove such liability by means of a tax return filed in another country).[392]

7. Tax Credits

a. Foreign Tax Credit

See XV.A.1., below

b. Investment Tax Credit

An investment tax credit is available under the CIT Act. The investment tax credit is explained in detail in II.A.2.b.(1), above.

c. Other Credits

In addition to the investment tax credit, the following tax credits are available under the Hungarian CIT rules:

(i) A tax allowance for support provided with respect to cinematographic works (see II.A.2.b.(3), above);

(ii) A tax allowance for small and medium-sized enterprises (see II.A.2.b.(4), above); and

(iii) A tax allowance for sponsorship of popular team sports (see II.A.2.b.(5), above).

8. Tax Rates and Calculation of Taxable Income

a. Tax Rates

The CIT rate is 9%.[393]

b. Minimum Tax

As stated in IV.B.2., above, in determining the CIT payable, the provisions relating to "minimum income" must be taken into account. If the pre-tax profit of a company or its tax base, whichever is higher, fails to reach a specified income threshold, the company has the option of either making a statement regarding the actual cost structure of its business in its tax return, or using a minimum income amount as its tax base and paying CIT on that amount. The minimum income amount is 2% of "modified total annual income."

Modified total annual income is calculated by making certain deductions from and additions to total income.[394]

The following may be deducted from total annual income:

(i) Where there has been a preferential transformation: the income recognized for the tax year with respect to the members or shareholders of the predecessor entity;

(ii) Where there has been a preferential transfer of assets: the income recognized for the tax year from the transfer of a strategic business unit with respect to the transferring company; and

(iii) Where there has been a preferential exchange of shares: the amount of capital gains recognized during the tax year as derived from shares transferred under the exchange with respect to any member or shareholder of the acquired company.

The following must be added to total annual income:

(i) Where there has been a preferential transformation or preferential exchange of shares: with respect to deductions taken by a member or shareholder, the sum subtracted from the original cost of the shares obtained in connection with the preferential transformation and transferred at their book value, as claimed for the tax year under any title (not to exceed the amount already taken into account as a deduction from the tax base), as well as the part not yet claimed as an increment in the tax year of termination without succession.

Example: If Company A contributes its existing shares in Company B as an in-kind contribution to the share capital of Company C and, as a result, Company C holds the majority of the shares in Company B, the transaction will qualify as a preferential exchange of shares. If, however, Company A and Company C are affiliated and the value of Company A's shares in Company C is less than the market value of the shares of Company B, Company A is required to increase its pre-tax profit by the difference between the value of the shares received in Company C and the market value of the shares in Company B.

(ii) Where there has been a preferential transfer of assets: with respect to the receiving company, from the sum the transferring company has claimed (and substantiated) as a deduction from total income, the amount depreciated in accordance with the Accounting Act in connection with tangible and intangible assets received to the extent of the original cost of such assets, as well as the amount remaining in the tax year of termination without succession. In calculating its CIT liability, the receiving company is allowed to use the book value of the assets as recorded by the transferring company. In calculating its annual modified income, the receiving company must add an amount that reflects the tax depreciation taken by the receiving company with respect to assets transferred at cost. As a result, the receiving company will pay the corresponding tax.

(iii) One-half of the amount by which the daily average of amounts owed to private individual members (excluding accounts payable for goods and services received, as well as any unpaid dividend shown under liabilities) exceed the amounts owed to private individual members (also excluding accounts payable for goods and services received, as well as any unpaid dividend shown under liabilities) on the last day of the tax year immediately preceding the current tax year.

9. Assessment and Filing

Under Schedule No. 2 to Act No. CL of 2017, companies are required to file their CIT returns and pay the CIT due by

[392] CIT Act, Sec. 16/B(7).
[393] CIT Act, Sec. 19.
[394] CIT Act, Sec. 6(8)–(9).

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the last day of the fifth month after the last day of the business year.

A company whose tax liability for the previous tax year was HUF five million or more must make monthly advance CIT payments. A company whose tax liability for the previous tax year was below this threshold, is required to make quarterly advance CIT payments.[395]

Note: Pursuant to Government Decree 298/2022 (VIII.9.), taxpayers can declare that they will pay their corporate tax assessment in U.S. dollars or euros, rather than Hungarian forint, provided they notify the tax authority by the first day of the month preceding the first day of the new tax year. This is a temporary measure, taken in relation to the state of emergency declared by the Hungarian Government due to the on-going Ukraine-Russia conflict. It will remain in place for as long as the state of emergency is in force.

10. Audits and Limitations Period for Assessment and Collection

a. Audits

The tax authorities conduct regular audits of taxpayers. The object of these audits is to enforce the provisions of the tax laws and other relevant legislation and to detect any violation or infringement of the rules. The tax authorities investigate the facts and circumstances of any alleged violation or infringement of the tax rules and gather data and information as evidence to support such allegations in the ensuing proceedings. In particular, the tax authorities audit tax returns, monitor the redemption of government guarantees, audit the fulfillment of certain tax obligations, investigate the authenticity of economic events, and may even re-audit previously audited tax periods.

Re-audits may only be conducted in certain circumstances:

(i) At the taxpayer's request, when the clarification of a new fact or circumstance may result in the modification of the statements of an earlier audit, provided that the new fact or circumstance was not, and in the case of a procedure in good faith, could not be available to the taxpayer, and/or the taxpayer was not, and in the case of a procedure in good faith, could not be aware of it;

(ii) In a situation where the result of the repeated audit, on the basis of the data available to the tax authority, results in entitlement to benefits; or

(iii) In the context of a revision audit.[396]

A revision audit is carried out by the tax authority of second instance. A revision audit can be conducted:

(i) If so ordered by the competent minister or the President of the State Audit Office, or, in the case of a special economic zone,[397] the regional municipality council, while in the case of local taxes, the municipal council has initiated the audit of a period already closed by audit;

(ii) If the head of the state tax and customs authority gives an order to that effect based on which the tax authority of second instance verifies the professionalism and legality of an audit conducted earlier;

(iii) If the tax authority becomes aware of any new fact, data or evidence that was not known at the time of the earlier tax audit, and the head of the state tax and customs authority gives an order to perform the tax audit. In this case, a revision audit may not be ordered if six months have passed since the conditions for ordering it came into existence.[398]

b. Statute of Limitations

Hungarian law makes a distinction between the statute of limitations for purposes of the assessment of tax and for purposes of the right to enforce payment of a particular tax liability.

As a general rule, the right to assess tax lapses five years after the last day of the calendar year in which the taxes concerned should have been declared or paid.[399] However, if the taxpayer files a late tax return and the date on which the return is filed is within six months of the date of expiration of the statute of limitations, the statute of limitations is extended by six months.[400]

In addition, the statute of limitations with respect to the right to assess tax is extended by 12 months if:

(i) A superior tax authority orders new proceedings within the framework of appeal proceedings;

(ii) A superior tax authority, the minister in charge of taxation or the minister appointed for the supervision of the tax authorities orders new proceedings as part of a supervisory measure; or

(iii) The court orders new proceedings within the framework of a review of the tax authority's resolution.[401]

However, in the case of tax fraud or fraudulent bankruptcy established by final court decision (if the offense involves taxes), the statute of limitations for purposes of the assessment of tax will not lapse for as long as the statute of limitations for the crime itself remains in effect.

A declaration of self-audit interrupts the statute of limitations if the tax difference is to the taxpayer's benefit.[402]

If the statute of limitations for purposes of the assessment of tax expires before the statute of limitations for purposes of the collection of taxes, the tax authorities would, in principle, still be able to enforce tax collection to the detriment of the taxpayer. To prevent this, Section 204 of Act CL of 2017, provides that if, after the right to assess tax has lapsed, the tax authorities declare part or all of the tax assessment unlawful, they may only restrict or cancel the unlawful tax assessment within the

[395] CIT Act, Sec. 26(7).

[396] Act CLI of 2017, Sec. 92.

[397] The government may declare areas of investments of utmost importance from the point of view of national economy and their immediate surroundings as special economic zones, if the investment costs reach 5 billion forint, the investment has an economic impact on a significant part of the county where the investment is carried out, and serves the purpose of preventing mass redundancies or creating new jobs.

[398] Act CLI of 2017, Sec. 93.

[399] Act CL of 2017, Sec. 202(1).

[400] Act CL of 2017, Sec. 203(1).

[401] Act CL of 2017, Sec. 203(7).

[402] Act CL of 2017, Sec. 203(2).

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statute of limitations for the enforcement of tax debts. The purpose of this clause is to protect a taxpayer from having to pay a potentially unjust tax debt that the taxpayer would otherwise be unable to challenge due to the expiration of the statute of limitations.

If a resolution of the tax authority is reviewed by a court, the limitation period for the right of tax assessment is suspended from the first effective date for instituting an action until the court's decision becomes definitive or, in case of a judicial review, until the conclusion of the judicial review.[403]

The right to enforce a tax debt lapses four years after the last day of the calendar year during which the debt falls due. If the tax authorities initiated an act of enforcement prior to the expiration of the statute of limitations, the statute of limitations will be extended by six months.[404] The statute of limitations for purposes of the right to enforce tax debts is interrupted and starts anew if the tax return is filed late.[405] Where liquidation proceedings are opened against a taxpayer, the running of statute of limitations for purposes of the right to enforce tax debts is suspended from the date on which the proceedings for the taxpayer's liquidation are opened and resumes upon the binding conclusion of the liquidation proceedings pursuant to a final decision.

The statute of limitations is suspended for periods during which the tax authorities are either physically (for example, when certain assets of the taxpayer are seized by the police in the course of a criminal investigation) or legally (during the suspension of an execution procedure) prevented from enforcing the tax.[406]

c. Late Payment Interest and Penalties

In the event of late payment of tax, interest is due from the payment due date. The interest is calculated at a rate of 1/365 of double the prevailing central bank base rate (as of July 21, 2023, the rate is 13% annually) for each calendar day.[407]

No interest for late payment is imposed for any period of delay that a taxpayer is able to justify.[408] Such justification is accepted only if the delay was caused by unavoidable external reasons beyond the taxpayer's control. According to the relevant jurisprudence, the term "unavoidable reasons beyond the taxpayer's control" is to be interpreted narrowly. For example, the fact that a taxpayer's clients have not paid on time does not excuse the taxpayer from paying taxes on time or from paying late interest.

In addition, tax arrears are also sanctioned by tax penalties. The tax penalty is 50% of the tax arrears with respect to which the penalty is imposed. On the other hand, the tax penalty will be 200% of the tax arrears, if the arrears relate to the concealment of income or the falsification or destruction of documents, books or records.[409] It should be noted that the tax authorities will also impose a tax penalty on a taxpayer that applies for a subsidy or a tax refund for which it is not eligible or that files a report on its eligibility or claims for subsidies or refunds if a lack of eligibility is established by the tax authorities prior to disbursement. The penalty in such cases is imposed based on the ineligible amount claimed.

In special circumstances involving equitable considerations, the tax authorities may grant relief from the liability to pay late interest or penalties or may allow the payment of tax in installments. The tax authorities may also amend the date from which late interest is to be calculated. The procedural rules are set out in a tax authority guide (No. 3002/2021).

In addition to late interest and tax penalties, default penalties may be imposed if there are no tax arrears, but the taxpayer has breached any of its other tax obligations (for example, the reporting and filing obligation).[410] The amount of the default penalty is determined individually for each specific breach of an obligation.[411]

Comment: These penalties tend to be low and generally fail to dissuade taxpayers from evading their tax liabilities. Furthermore, taxpayers tend to anticipate that they will be outside the tax authorities' investigative scope and therefore avoid audit.

11. Consolidated Returns

A parent company that meets a specified threshold is required to prepare consolidated annual accounts. A parent that does not meet the thresholds[412] is exempt from this obligation.

Where consolidation is required, a difference may arise between the total pre-tax profit reported on the consolidated profit and loss statement, and the sum of the individual pre-tax profits of each company in the consolidation. However, since CIT is calculated at the level of the individual companies, this difference would not affect the CIT liability of the group as a whole. Nevertheless, any CIT difference arising from the inclusion of the negative tax bases of some of the group members involved and from the consolidation process itself must be calculated and reported in the annual consolidation account of the parent company, if such difference is expected to be settled in the course of subsequent years.[413]

12. Reorganizations

The following rules apply on a change in the legal form of an entity, a merger or a spin-off:

(i) The predecessor entity is required to decrease its pre-tax profit by the amount by which the total adjusted book value of its intangible and tangible assets exceeds their total book value, or increase its pre-tax profit by the amount by which the total book value of its assets exceeds their total adjusted book value. In the case of a spin-off, the prede-

[403] Act CL of 2017, Sec. 203(4).
[404] Act CLIII of 2017, Sec. 19(1).
[405] Act CLIII of 2017, Sec. 19(2).
[406] Act CLIII of 2017, Sec. 19(5).
[407] Act CL of 2017, Sec. 209(1).
[408] Act CL of 2017, Sec. 206(3).
[409] Act CL of 2017, Sec. 215(3)–(4).
[410] Act CL of 2017, Sec. 220(1).
[411] Effective as of August 1, 2024, default penalties for certain breaches of obligations are doubled pursuant to Government Decree No. 181/2024 (VII.8.). The higher rates are said to stay in place only for so long as the state of emergency that Hungary declared in relation to the Ukraine-Russia conflict remains in force.
[412] A company will not meet the threshold if it satisfies two of the following three criteria: (i) its balance sheet total does not exceed HUF 6 billion; (ii) its annual net sales revenue does not exceed HUF 12 billion; and/or (iii) its average number of employees in the financial year does not exceed 250 persons.
[413] Accounting Act, Sec. 132.

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cessor entity must comply with these provisions during the tax year in which the spin-off takes place and solely with respect to assets transferred to the successor entity based on the final statement of assets and liabilities in effect at the time of the spin-off.

(ii) The predecessor entity, or the successor entity in its first tax year in the case of a spin-off, is required to adjust its pre-tax profit by the amount of the consolidated revaluation difference shown in the final statement of assets and liabilities increased by any depreciation of receivables, any appreciation of provisions added, and any depreciation of provisions deducted.

(iii) The successor entity is required to adjust its pre-tax profit in its first tax year by the amount of the retained earnings differential that resulted from the change of legal form, merger or spin-off. In the case of a change of legal form or merger, the amount will derive from the predecessor entity using single entry bookkeeping. In the case of a spin-off, the amount will derive from the successor entity.

(iv) The successor entity is required to adjust its pre-tax profit based on the amount shown in the final statement of assets and liabilities for assets received for a liability assumed from the predecessor entity in excess of its book value or, if the receivable is downgraded as irrecoverable, may adjust its pre-tax profit accordingly (i.e., as the predecessor entity would have done had the change of legal form, merger, or spin-off not taken place).[414]

A "preferential reorganization" may benefit from certain exemptions if it satisfies certain criteria. A company reorganization is deemed to be "preferential" if both the predecessor and successor are corporations and the following conditions are fulfilled:

(i) The members or shareholders of the predecessor company are provided shares in the successor company and, if there is also a cash payment, the payment does not exceed:

(a) 10% of the total nominal value of the shares acquired in connection with the transformation, merger or division; or

(b) where the shares have no nominal value, the percentage they represent of the subscribed capital; and

(ii) In the case of a demerger, the members or shareholders of the predecessor company are provided with a proportionate share in the capital of the successor companies; or

(iii) In the case of a merger, the merger is with the sole proprietor or shareholder of a single-individual company,

provided that the transformation is based on economic reality and genuine commercial reasons, with the proviso that the burden of proof to verify the existence of genuine economic and commercial reasons lies with the taxpayer.[415]

Not all corporate reorganizations qualify as preferential. For a reorganization to qualify, the companies involved must be business associations (including nonprofit business associations, existing or in formation regulated real estate investment companies, and regulated real estate investment special purpose companies), associations, cooperatives or companies established in an EU Member State under the tax laws of that state. Consequently, a cross-border reorganization within the European Union may qualify as preferential.

a. Change of Legal Form

A change of legal form will always qualify as a preferential reorganization, provided the legal forms of the predecessor and successor entities fall within the definition of corporation under the CIT Act.

b. Mergers, Spin-offs

As noted above, in the case of a merger, a further requirement for qualifying as a preferential reorganization is that, if cash is received by the shareholders of the predecessor entity in addition to shares in the successor company, the cash payment may not exceed 10% of the nominal value of the acquired shares.

In the case of a demerger, a further requirement is that, to the extent shareholders of the predecessor company acquire shares in a successor company, the shareholding proportions of all the shareholders are maintained in the successor company.

Examples:

(1) Company A has two shareholders, B and C, which own, respectively, 40% and 60% of its shares. Company A demerges into companies D and E. B will be the sole shareholder of company D, and company E will be solely owned by C. Since there are no relative shareholdings to compare in either of the successor companies, the reorganization will qualify as preferential.

(2) Company A has four shareholders, B, C, D, and E, which own, respectively, 15%, 30%, 30% and 25% of its shares. Company F is a spin-off of company A. Company F has three shareholders (B, C, and D). In company A their proportionate shares were as follows: B:C = 1:2, B:D = 1:2, C:D = 1:1. If their shareholdings in company F are 20%, 40% and 40%, respectively, the spin-off will qualify as a preferential reorganization. If, on the other hand, their respective shareholdings in company F were 10%, 30% and 60%, the spin-off would not qualify as a preferential reorganization.

c. Cross-Border Transactions

The transformation of a company established in the European Union may qualify for preferential tax treatment if the company: (i) has one of the forms that qualify under the EU Merger Directive or the EU Parent-Subsidiary Directive;[416] (ii) is taxable under these Directives without the possibility of opting out of being taxed or qualifying for an exemption; and (iii) is not a resident of a non-EU Member State under the provisions of an applicable tax treaty.

[414] CIT Act, Sec. 16(2).

[415] CIT Act, Sec. 4, point 23/a.

[416] Council Directive on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member states (90/434/EEC); Council Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states (90/435/EEC).

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d. Preferential Tax Treatment for Qualifying Reorganizations

If additional conditions are fulfilled, companies are not required to adjust their pre-tax profit by either the difference resulting from the adjustment of the value of their assets or the amount of the consolidated revaluation difference shown in the final statement of assets and liabilities increased by any depreciation of receivables and appreciation of provisions added and any depreciation of provisions deducted.[417]

The additional conditions are as follows:

(i) The successor company's memorandum of association must stipulate a commitment to apply the rule below in (ii) and the predecessor company (or the successor in the case of a division) must notify the tax authorities of its election to apply the preferential tax regime in the tax return filed for the tax year in which the transformation, merger or division took place; and

(ii) After the transformation, merger or division, the successor must determine its tax base taking into account the assets and liabilities received from the predecessor company (including provisions and deferred expenses or accrued income), by adjusting the pre-tax profit, as if the transformation, merger, or division had not taken place. The successor must keep separate records of such assets and liabilities after they are revalued, indicating their original value and the book value recorded by the predecessor company on the date of the transformation, merger, or division, their adjusted book value, and the amounts claimed after the transformation, merger or division to adjust the pre-tax profit based on the assets and liabilities concerned.[418]

It should be noted that the acquisition of property by way of a preferential reorganization is exempt from transfer duty irrespective of whether the preferential reorganization satisfies the above two additional criteria.

The shareholder(s) of a company that undergoes a preferential reorganization enjoys an additional preferential tax benefit: the capital gains associated with the termination of the shareholding in the course of the preferential reorganization decreases the shareholder's or shareholders' pre-tax profit.[419]

e. Liquidations

Special rules apply to companies terminated without legal succession. These rules also apply where a company falls outside the scope of the CIT Act and opts to be subject to a different tax regime (for example, simplified business tax). The general purpose of these special rules is to make companies terminated without legal succession liable for the payment of tax benefits for which they are no longer eligible because of their termination.

Example: Charitable donations are tax deductible within the framework of a long-term cooperation agreement with a public-benefit organization. The donor company can claim a deduction of such donations as of the first year of cooperation with the public-benefit organization. However, if over the period of cooperation, the company is terminated and thus turns out not to be able to fulfill the commitment assumed under the cooperation agreement, the company's tax benefit must be recaptured. On termination, the company must increase its tax base by the corresponding amount.

13. Advance Rulings

At a taxpayer's request, the minister in charge of taxation will determine — in connection with any specific question(s) raised in the application — whether any tax liability applies relating to: (i) any future transaction; or (ii) a transaction not recognized as an anticipated future transaction based on the detailed information supplied by the taxpayer.[420]

Different rules apply depending on whether the application relates to a future transaction or to a transaction that does not qualify as a future transaction. Accordingly, in the case of a transaction that is considered continuous and recognized as an anticipated future transaction, the minister in charge of taxation will establish tax liability or lack of liability only in connection with VAT. With respect to any transaction that is not recognized as an anticipated future transaction at the time the application is submitted, a provisional tax assessment may be requested only in connection with CIT, PIT, small business tax, and local business taxes. The application must be submitted for the specific type of tax in question and before the tax return for the relevant tax period is filed (at the latest by the deadline for submission).[421]

The tax authorities will issue a decision regarding a provisional tax assessment within 90 days from the time of submission of the application, but this deadline may be extended once for 60 days. In its application, a taxpayer may request that its application be processed under the urgent procedure, i.e., within 60 days, plus a possible one-time 30-day extension.[422]

An application for a ruling is subject to a fee.

The resolution adopted with regard to a provisional tax assessment is not subject to appeal but can be disputed in court.[423]

Inspections of transactions to which an application for provisional tax assessment pertains may not be conducted between the application's submission and 15 days after the operative date of the tax authorities' decision regarding the assessment.

The binding force of the resolution adopted in the provisional tax assessment procedure lasts until the last day of the fifth tax year following the issue of the resolution, which can be extended by two years upon request.[424]

A provisional tax assessment is only binding on the tax authority for the case in question and under unaltered conditions.

A nonresident person may also apply for a provisional tax assessment provided it has appointed a Hungarian resident representative.

[417] CIT Act, Sec. 16(9).
[418] CIT Act, Sec. 16(10)–(11).
[419] CIT Act, Sec. 7(1), point gy.
[420] Act CL of 2017, Sec. 164(1).
[421] Act CL of 2017, Sec. 164(4)–(5).
[422] Act CL of 2017, Sec. 166(1)–(2).
[423] Act CL of 2017, Sec. 168.
[424] Act CL of 2017, Sec. 170.

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Additionally, under an Advance Pricing Agreement (APA), the administration and a taxpayer can agree in advance concerning the appropriate approach to determining the arm's-length price to be charged in transactions between related entities. Under this regime, unilateral, bilateral and multilateral APAs may be entered into under internationally accepted procedures. Bilateral and multilateral APAs create an assurance in advance for taxpayers that a consistent approach will be taken by the governments involved in a cross-border transaction, thus avoiding the possibility of costly disputes at a later date. An APA requested with respect to future transactions remains in effect for three to five years (for further details, see XIII., below).

C. Other Taxes

1. Dividend Tax

See V.B.3.c., above.

2. Capital Investment Tax

See IV.E., above.

3. Value Added Tax

See IV.D., above.

4. Business Taxes

The local business tax is discussed at IV.J.1., above, and the small business tax at VIII., below.

5. Tax on Real Estate

The transfer tax on real estate is discussed at IV.G., above, and the local tax on buildings at IV.J.2., above.

6. Local Taxes

See IV.J., above.

7. Other Taxes

See IV.K., above.

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VI. Taxation of Foreign Corporations

A. What is a Foreign Corporation?

The taxation of foreign corporations is determined under both Hungarian domestic law provisions and the provisions of bilateral and multilateral tax treaties to which Hungary is a party. The majority of Hungary's treaties are based on the OECD Model Convention with Respect to Taxes on Income and Capital (the "OECD Model Convention").

It is important to distinguish between a resident and a foreign (nonresident) corporation from the perspective of corporate income tax (CIT), since a nonresident corporation is liable to CIT only on its income from business operations performed at its Hungarian place of business (limited tax liability). In other words, subject to some exceptions relating to income and capital gains from real property located in Hungary and real property holding companies, Hungarian-source income of a foreign corporation that is not attributable to a permanent establishment (PE) in Hungary is generally not subject to Hungarian CIT.

In harmony with the OECD Model Convention, Act LXXXI of 1996 on corporate income tax and dividend tax (the "CIT Act") provides that any nonresident person whose principal place of business management is in Hungary is to be treated as a resident taxpayer. Under the CIT Act, the "place of management" means the place where the management of the company is located. The Commentary on the OECD Model Convention, on the other hand, defines the "place of effective management" as the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made. All the relevant facts and circumstances must be examined to determine the place of effective management. An entity may have more than one place of management but can have only one place of effective management at any one time. In applying the Hungarian definition, however, the definition in the OECD Model Convention is also taken into consideration.

As noted above, a nonresident corporation is taxed only on its income derived through its Hungarian place of business. The CIT Act refers to an establishment, while the Model Convention uses the phrase "permanent establishment" rather than "establishment." In practice, however, the definitions of the two terms are similar.

Under the CIT Act, an establishment is defined as:[425]

(i) A permanent business establishment, including equipment and accessories, that is used by the taxpayer in whole or in part for business activities, irrespective of the taxpayer's entitlement to use them. The term establishment covers, in particular, the place of management, representative offices established with a registered office in Hungary, offices, factories, plants, workshops, mines, crude oil or natural gas wells, and other facilities used to explore or exploit natural resources;

(ii) A site of construction or assembly operations (collectively a "construction site"), including related supervisory activities, if the construction continues for a total of at least three months[426] (with or without interruption) with regard to individual construction sites, irrespective of whether the activity is based on a number of independent contracts and whether it was commissioned by a number of parties; any construction project constituting one unit from an economic, business and geographical point of view is considered to be one construction site;

(iii) A place of business at which a foreign person directly utilizes natural resources in Hungary;

(iv) A place of business at which a foreign person utilizes any real property or natural resources in return for consideration or at which a foreign person transfers, sells or makes a contribution in kind of any rights in real property or natural resources in return for consideration (other than a real estate fund with legal personality, established in a European Economic Area (EEA) Member State that is not subject to a tax on profits in its home State that is equivalent to CIT);

(v) A place of business at which a foreign person carries on activities (other than activities deemed not to constitute a place of business, as discussed below) through another foreign or resident person on its behalf, if such agent is entitled to enter into contracts in Hungary on behalf of the foreign person and exercises such right on a regular basis, or maintains stocks of commodities or products from which the agent regularly makes deliveries on behalf of the foreign person;

(vi) Engaging in business operations through a branch (see VII.A., below);

(vii) Supplying services through a natural person employed as an employee by a foreign person, provided that the supply of services exceeds 183 days, whether consecutively or intermittently, in any 12-month period;

(viii) If the activities of a foreign person activities comply with the definition of a PE in a tax treaty concluded between the foreign person's state of tax residence and Hungary; and

(ix) Without prejudice to the above provisions, if another person takes out insurance for risks occurring in Hungary on behalf of a foreign person, with the exception of reinsurance and otherwise excluded activities.

The following are not considered to constitute a place of business:

(i) An establishment used exclusively to store and present the goods or products of a foreign person;

(ii) The stockpiling of goods and products of a foreign person exclusively for storage, presentation, and processing by another person;

(iii) An establishment maintained exclusively for purchasing commodities and products or collecting information for a foreign person;

[425] CIT Act, Sec. 4, point 33.

[426] Where a tax treaty based on the OECD Model Convention applies, the time requirement is 12 months.

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(iv) An establishment maintained exclusively for carrying out preliminary or auxiliary activities; and

(v) Activities carried on by an independent representative (including a commission agent), if the representative is acting within the framework of his/her ordinary business activities.

The general criteria to be satisfied for a foreign enterprise to be considered to have an establishment in Hungary are that the enterprise: (i) carries on some sort of business activity (ii) through its more or less permanent place of business in Hungary. The term "permanent" is not defined under Hungarian law. In this respect, the tax authorities tend to rely on the Commentary on the OECD Model Convention, which indicates that permanence cannot be defined exclusively by reference to a time requirement. Nevertheless, although a period of six months can be regarded as a rule of thumb for determining permanence, this rule must be applied with care, since a place of business may constitute a PE even though it exists, in practice, only for a very short period of time because the nature of the business is such that it will only be carried on for a short period of time. An exception also exists where the activities concerned are of a recurrent nature. In such cases, each period of time during which a place of business is used must be considered in combination with the number of times during which that place is used (which may extend over a number of years). An additional exception exists for activities constituting a business that is carried on exclusively in the country concerned. In this situation, the business may have a short duration because of its nature, but since it is wholly carried on in the country concerned, its connection with that country is stronger.

A nonresident company without a PE in Hungary will nevertheless be taxable in Hungary if it is a shareholder in a company with real estate holdings in Hungary.[427] A "company with real estate holdings" is defined under the CIT Act as a company (with the exception of a company listed on the stock exchange) where:

(i) The book value of the Hungarian real property shown on the balance sheet date represents more than 75% of the total value of all the assets shown in the company's annual account; and

(ii) Any member (shareholder) of the company or of another company in the same group was a resident on at least one day of the tax year in a country that either does not have a tax treaty with Hungary or has a treaty with Hungary that provides for the taxation of capital gains in Hungary.[428]

The tax liability of any shareholder of a company with real estate holdings arises on the day on which the shareholder transfers its shares in the company or the company's subscribed capital is reduced by way of disinvestment.[429] In other words, these provisions do not apply if the taxpayer neither alienated nor withdrew its shares during the preceding calendar year.

The tax base of a shareholder of a company with real estate holdings consists of the consideration received on the shareholder's transfer of its shares in the company, or the sum received when the subscribed capital of the company is reduced through disinvestment, less the costs of acquisition or maintenance as verified, if the resulting amount is positive.[430] A transfer will also be deemed to take place when shares are made available as a non-cash contribution to capital or shares are provided for no compensation.

The consideration received by the taxpayer is either: (i) the contracted purchase price, or the fair market value if the shares are sold to an affiliated company; (ii) the value determined in the deed of foundation if the shares are made available as a non-cash contribution to capital or the fair market value if the shares are made available to an affiliated company; (iii) the fair market value if the shares are provided for no compensation; or (iv) the value of the assets received in exchange for the withdrawn shares if the subscribed capital is decreased through disinvestment.[431]

Foreign corporations are subject to a corporate income tax (CIT) rate of 9%.

B. Determination of Taxable Income, Method of Taxation, Assessment, and Filing

As in the case of a resident company (see V., above), the CIT base of a nonresident company taxable in Hungary is derived from the pre-tax profit (as determined from the closing accounting statement), as adjusted in accordance with the CIT Act. With the exception of branches legally established as such in Hungary, nonresident companies are not required to prepare annual reports under the Accounting Act.[432]

The following summary focuses only on those provisions applicable to nonresident companies that deviate from the taxation rules discussed in V., above.

The corporate tax liability of a nonresident enterprise engaged in business operations in Hungary through a business establishment that has not been registered by the court of registry as a branch, commences on the day on which the first legal statement that brings the place of business into existence is issued, and terminates on the day on which the foreign enterprise is dissolved or the legal statement resulting in the dissolution of the business establishment is issued.[433]

A special rule applies in the case of construction projects. Where the tax liability of a foreign enterprise derives from a construction project carried out in Hungary, the liability commences on the first day of construction if the duration of the project exceeds a period of three months or, if a tax treaty applies, the period defined in the treaty (usually 12 months, in accordance with the OECD Model Convention). Furthermore, in such cases (including construction or installation works performed through a branch), the initial tax liability covers the first 12 months and for the following year and must be satisfied in the year following the completion of the initial 12-month period. Thereafter, tax is paid on an annual basis.

The sales revenue, income, costs and expenses of a business establishment are to be accounted for as if it were a

[427] CIT Act, Sec. 2(4), point c).
[428] CIT Act, Sec. 4, point 18/a.
[429] CIT Act, Sec. 5(9).
[430] CIT Act, Sec. 15/A(1).
[431] CIT Act, Sec. 15/A(3).
[432] CIT Act, Sec. 5(4).
[433] CIT Act, Sec. 5(3).

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separate entity, independent from the nonresident company of which it is an establishment.[434] A foreign company with more than one business establishment is required to calculate its CIT base concurrently for all its Hungarian business establishments (excluding branches). By contrast, a foreign person with more than one branch in Hungary must calculate the CIT base separately for each branch.

The pre-tax profit of a nonresident company with respect to its domestic business establishment is subject to the following adjustments:[435]

(i) The pre-tax profit is reduced by a portion of total operating costs, expenses and overhead (for example, management costs, administrative expenses, etc., but not foreign taxes payable) charged to its main office and to other business establishments during the tax year. However, the ratio of the business establishment's costs, etc. to the nonresident company's total operating costs, etc. cannot exceed the ratio of the total sales revenue and other income reported by the business establishment to the total of all sales revenue and other income of the nonresident company;

(ii) The pre-tax profit is increased by operating costs and expenses and overhead of the business establishment charged in arriving at the pre-tax profit or loss; and

(iii) The pre-tax profit is increased by 5% of the sales revenue and other income earned through, but not recorded by, the business establishment (i.e., if the main office recorded such revenue and income directly, but the revenue was generated as a result of business activities carried on by the establishment).[436]

Members of companies with real estate holdings are obliged to assess and pay the tax by November 20 of the year following the calendar year to which it pertains.[437]

Nonresident business entities without a branch and foreign persons with head offices in Hungary are required to comply with their accounting obligations according to the provisions of the Accounting Act pertaining to companies using double-entry bookkeeping. Taxpayers considered residents on account of the place where their head office is located may — at their discretion — enter the tangible assets and intangible assets acquired before the time of obtaining resident status into their records at the book value in effect on the day of obtaining resident status, provided that no depreciation write-off was claimed with respect to those assets before the time of obtaining resident status.[438]

[434] CIT Act, Sec. 14(1).

[435] The purpose of these adjustments is to allocate properly revenue and expenses between a nonresident company and its business establishment.

[436] CIT Act, Sec. 14(2).

[437] CIT Act, Sec. 15/A(7).

[438] CIT Act, Sec. 5(10).

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VII. Taxation of a Branch

A. Determination of Taxable Income

A branch is a business establishment of a foreign company registered as such in the Hungarian company registry.

Like any nonresident corporate taxpayer, a branch is taxable in Hungary only on its Hungarian source income. A branch is required to prepare an annual report in accordance with the Accounting Act that serves as the basis for determining its pre-tax profit. In general, the pre-tax profit of a branch is adjusted under the same provisions of Act LXXXI of 1996 on corporate income tax and dividend tax (the "CIT Act") as apply to domestic corporations, subject to some exceptions as explained in B., below.

It should be emphasized that, as discussed in VI., above, establishments carrying on certain activities (such as storage or construction projects shorter than 12 months) will not qualify as places of business, and thus, will not generate taxable income under the CIT Act. The same applies also to branches that exclusively carry on these types of activities. This means that, although these branches are required to prepare and file annual reports in accordance with the Accounting Act, they will not be regarded as taxpayers. However, the tax authorities tend to scrupulously investigate whether the activities of branches are indeed exclusively non-taxable under the CIT Act.[439]

B. Method of Taxation

Like that of other nonresident corporate taxpayers (see VI.B., above), the pre-tax profit of a nonresident company attributable to its Hungarian branch is subject to adjustments (see the adjustments applicable in the case of a business establishment discussed in VI.B., above).

As previously noted, tax must be assessed, and a tax return filed separately for each branch in Hungary.

A branch is established in accordance with the provisions of Act CXXXII of 1997 with the registration of the branch in the company registry. Unlike a commercial representative office, a branch is allowed to engage in business activity under its own name.

Unlike other nonresident corporate taxpayers, branches fall within the scope of the Accounting Act and, consequently, are required to prepare and publish annual reports under that Act,[440] except Hungarian branches of companies that are established in other EU Member States. The annual reports of a branch's head office must also be deposited and published in Hungary.[441]

Accordingly, although a branch constitutes an integral part of the assets of the company of which it is a branch, and as such, must be registered in the books of that company in accordance with the laws applicable to that company, separate records must be maintained with respect to the branch in accordance with the Hungarian Accounting Act.

A few specific rules of the Accounting Act apply with respect to branches, as described below.

The capital provided and made available permanently by a nonresident company for the operation of its Hungarian branch and for the settlement of its debts must be shown as subscribed capital.[442] In addition, the Hungarian branch of a nonresident company is required to show its receivables from, and liabilities to, the nonresident company or any other branch of that company under "other short-term receivables" and "other short-term liabilities," respectively, including items the consideration for which is paid by the branch's customers and clients directly to the nonresident company or another branch, and liabilities of the branch that are directly settled by the nonresident company or another branch.

The amounts of receivables and liabilities that are not to be settled financially are cross-verified at year end.[443]

In addition, in the course of its operation, a Hungarian branch of a nonresident company is required to account for the invoiced value of assets received from the nonresident company or from any other branch of the company as purchases. The cost (original cost) of the assets entered in the books in this manner must, in such cases, include all items that may be attached to the assets in question under the Accounting Act (including interest on loans).[444] The idea behind this rule is that a branch does not have a separate legal identity in Hungary (although registered in the company registry) and constitutes a part of the nonresident company of which it is a branch. The nonresident company is required to provide the assets necessary for the operation of the branch. The cost of these assets made available to the branch (regardless of whether paid for directly by the branch or the nonresident company) must be recorded in the books of the branch.

C. Subsidiary vs. Branch

The issues as to whether it is better for a foreign company that intends to do business in Hungary to set up a subsidiary or a branch generally depends on how extensive its Hungarian business activity is planned to be. A branch is sufficient for a boutique shop employing only a few people and with its primary purpose being merely to establish a local presence, with all business decisions and most back-office duties continuing to be made and fulfilled by the main office. A branch is considered simply an extension of the company of which it is a branch of. For more complex business activities (typically, manufacturing), a foreign company is better advised to establish a subsidiary in Hungary.

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[439] *See, e.g.,* Supreme Court Decision No. Kfv.I.35.021/2007/8.
[440] Accounting Act, Sec. 3(1), point 2.
[441] Accounting Act, Sec. 153(5).
[442] Accounting Act, Sec. 35(6).
[443] Accounting Act, Sec. 43(3).
[444] Accounting Act, Sec. 50(8).

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VIII. Partnerships

Partnerships are treated as separate entities for tax purposes. They are taxed at the entity level under the general rules applying to other business entities. However, the partners in a general partnership bear secondary liability for the payment of taxes (as they do for other liabilities of the partnership).

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IX. Taxation of Other Business Entities

A. Insurance

Insurance tax is payable by insurance companies providing insurance services where the place of insurance risk is in Hungary.

Generally, the insurance tax rate is 15% of the tax base in connection with comprehensive insurance policies, 10% of the tax base in connection with property and accident insurance policies, and 23% of the tax base in connection with compulsory motor vehicle liability insurance policies, not to exceed HUF 83 per motor vehicle for each calendar day of the period of risk coverage provided by the insurance company.[445] However, for a taxpayer whose total tax base for the tax year immediately preceding the month of tax assessment is less than HUF eight billion, the applicable tax rates on the tax base for the month being assessed are as follows: 25% of the tax payable on taxable insurance services income up to HUF 100 million; 50% of the tax payable on income over HUF 100 million and up to HUF 700 million; and 100% of the tax payable on income over HUF 700 million.[446]

B. Energy Distribution

Companies that supply energy are subject to a tax that is popularly referred to as the "Robin Hood tax." The rate of this tax is 41% in 2023 and 2024, pursuant to the interim emergency measures adopted by the Hungarian government.[447] The tax base is the taxpayer's adjusted earnings before tax.[448] The tax is payable in equal monthly or quarterly installments depending on the amount of tax payable.

C. Financial Services

1. Special Tax on Financial Institutions

The financial organizations affected by the financial institutions' special tax are banks, specialized credit institutions, financial businesses, investment businesses, businesses managing investment funds and venture capital funds.[449]

Initially, this special tax was heavily criticized internationally, but such criticism appears to have been resolved as a consequence of an agreement concluded between Hungary and the European Bank for Reconstruction and Development (EBRD) in February 2015.[450] Under the Memorandum of Understanding signed by the parties, Hungary is gradually to reduce the tax burden on the banking sector with a view to providing a stable environment and improving the business climate in the banking sector so as to support more lending and, thus, economic growth. Concrete measures under the Memorandum of Understanding include a substantial reduction of the tax rate over the period 2016 to 2019. This means that the rate of the financial institutions' special tax has gradually decreased. For credit institutions, the taxable base had been their adjusted balance-sheet total calculated based on the annual accounts drawn up for 2009. From 2017, the tax base was the adjusted balance-sheet total calculated based on the annual accounts drawn up for the year two years prior to the tax year. The general tax rate dropped from 0.53% to 0.15% on a tax base of up to HUF 50 billion and is 0.2% on the amount in excess of this threshold.

Comment: In 2020, a Covid-19 pandemic fund was brought to life by the government to execute the governmental measures intended to revive the economy. One of the sources to finance the pandemic fund was through an additional extra tax imposed on credit institutions. This tax was only in force in 2020: the tax base was the amount in excess of HUF 50 billion of the tax base calculated for the purposes of determining the special tax and the rate was 0.19%.[451] This extra tax is now allowed to be set-off over a period of five years against the special tax that credit institutions are still obliged to pay.[452]

2. Financial Transaction Tax

The scope of the tax on financial transactions extends to most retail, corporate banking and postal transactions, subject to a few exceptions, including cash pooling activities under certain conditions. Financial transaction tax applies to payment service providers, financial institutions providing credit and loans that are not construed as payment service providers, credit institutions licensed to carry on foreign exchange activities and special intermediaries authorized to mediate exchange services.[453] The tax is always payable by the service provider.

As a general rule, the taxable base is the amount by which the payment service provider debits the account of the paying party.[454] The general tax rate is 0.3%, capped at HUF 10,000 per transaction.[455] Cash payment transactions are subject to a higher rate of 0.6%, without a cap on the duty payable.[456]

Note: Effective as of August 1, 2024, these rates have increased as a result of Government Decree No. 197/2022 (VI.4.). The new rates are 0.45% capped at HUF 20,000 per transaction and 0.9% for cash transactions. These new rates are introduced by the government rather than by the Parliament and are meant to be in place only in so long as there is a state of danger declared in Hungary.

D. Telecommunications

Telecommunication tax is levied on telecommunication services and is payable by telecommunication service providers in Hungary. The tax base is the time of calls initiated from the relevant call number and the number of text messages sent. The tax rate is HUF 2 per minute for each initiated call in the case of individual subscribers and HUF 3 per minute in the case of corporate subscribers, and HUF 2 per SMS and MMS message in the case of individuals and HUF 3 per message in the

[445] Act CII of 2012, Sec. 5(1).
[446] Act CII of 2012, Sec. 5(2).
[447] Act LXVII of 2008, Sec. 7(1); Government Decree No. 197/2002 (VI.4-), Sec. 8(6).
[448] Act LXVII of 2008, Sec. 6(1).
[449] Act LIX of 2006.
[450] See http://www.ebrd.com/news/2015/hungary-ebrd-and-erste-group-join-forces-to-strengthen-financial-sector-and-bolster-economic-growth.html.
[451] Government Decree No. 108/2020 (IV.14.)
[452] Act LIX of 2006, Sec. 4/A(20)–(21).
[453] Act CXVI of 2012, Sec. 1(1).
[454] Act CXVI of 2012, Sec. 6(1).
[455] Act CXVI of 2012, Sec. 7(1), point a).
[456] Act CXVI of 2012, Sec. 7(1), point c).

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case of corporate subscribers.[457] The tax is capped at HUF 700 per month per call number for individuals and HUF 5,000 per month for corporates.

E. Energy Production

The energy tax was introduced with a view to achieving the objectives of energy management and environmental protection and for purposes of integrating external environmental damage into energy prices, promoting energy saving and creating the conditions supporting these criteria in the taxation of electric power, natural gas and coal. The energy tax is payable with respect to certain energy trade services. As discussed in IV.K.2., above, as of July 1, 2017, the rules on the energy tax are incorporated in the Excise Tax Act.

The following transactions are taxable:

(i) The sale of energy by an energy trader to end users, excluding household consumers;

(ii) The purchase of energy by end users (excluding household consumers) in Hungary directly from producers or regulated markets;

(iii) The purchase of energy by end users (excluding household consumers) in Hungary directly from another EU Member State;

(iv) The purchase of energy by end users (excluding household consumers) directly from a non-EU Member State;

(v) The production of energy by persons for their own use, with the exception of electricity produced from renewable energy sources; and

(vi) The use of energy by energy traders for their own use.

The taxpayer is the energy trader in the case of the transactions listed above at (i) and (vi), the end user in the case of the transactions listed above at (ii) through (iv), and the producer of the energy in the case of the transactions listed above at (v).[458]

The tax rates are as follows:

(i) HUF 358.5/MWh of electrical power;

(ii) HUF 0.3492/kWh of natural gas; and

(iii) HUF 2,905/1,000 kg of coal.[459]

F. Windfall Taxes

The government of Hungary has imposed temporary extra profits tax on key sectors of the economy (financial, energy, pharmaceutical, retail, airlines and telecommunications) by virtue of Government Decree 197/2022 (4.VI.). Initially, these taxes were intended to apply for 2022 only, but — with few modifications— they were extended into 2023 and 2024. These taxes are levied in addition to the corporate income tax and local business tax and, for energy producers, the so-called Robin Hood surtax.

From July 1, 2023, banks must pay an extra profits tax on the tax base determined on the basis of their adjusted pre-tax profits. The tax base is reduced by dividend income for tax year 2022 and profits from the supply of goods and services not in the ordinary course of business. The rate of the special tax is tiered: 13% for the part of the tax base not exceeding HUF 20 billion, and 30% for the part above this amount.

From 2024 onwards, the annual extra profits tax liability may be reduced if the daily average stock of Hungarian government securities held by a bank or financial undertaking for the period January 1, 2024 to November 30, 2024 increases compared to the daily average stock held between January 1, 2023 and April 30, 2023. By purchasing government securities, the windfall tax liability of banks can be reduced by up to 50% of the amount payable for the tax year.

Insurance companies are also subject to a surtax liability on their income from the provision of certain insurance services and premiums. The rate of the additional tax is graduated and depends on the nature of the income: for income from the provision of services up to HUF two billion, the tax rate is 2%; between HUF two billion and HUF 36 billion, it is 4% and above this amount it is 12%, while for insurance premiums the tax percentages are 1%, 1.5% and 5% of the value, respectively.

Producers of petroleum products (which, for practical purposes, refers to the Hungarian oil and gas company, MOL Nyrt., exclusively) are subject to an extra profits tax of 95%. The tax is based on the difference between the world market price of crude oil and the barrel volume of crude oil purchased from the Russian Federation during the month in question.

Producers of electricity from renewable energy sources or waste, suppliers of balancing regulation services, producers of processing industries (i.e., producers of bioethanol, starch and starch products, and sunflower oil) are also subject to the special windfall tax. The tax rate is 65% on the net excess turnover, which presumably refers to unplanned profits generated by high energy costs in comparison to profits projected by business models reflecting government price supports for renewable energy producers.

Pharmaceutical manufacturers are also subject to a windfall tax on their adjusted profit margins. Starting in 2024, the tax rates are as follows: up to HUF 50 billion: 0.5%; above HUF 50 billion and up to HUF 150 billion: 4%; and above HUF 150 billion: 7%. In addition, effective as of 2024, pharmaceutical manufacturers are also subject to an additional special tax. The tax base is the net revenue, while the rates are as follows: up to HUF 50 billion: 0.5%; above HUF 50 billion and up to HUF 150 billion: 1.5%; and above HUF 150 billion: 4%. The windfall tax paid by the taxpayer may be deducted from this special tax up to the amount of the special tax.

Furthermore, the retail sector is subject to special taxes. Here, too, the tax is based on turnover and the tax rate is tiered: above HUF 500 million and up to HUF 30 billion: 0.15%; above HUF 30 billion and up to HUF 100 billion: 1%; and above HUF 100 billion: 4.1% (4.5% in 2024). (Special tax rates apply for the retail sale of automative fuel.)

Likewise the extra profits tax is also payable by telecoms and airlines.

Telecoms pay a tiered windfall tax based on their net turnover: above HUF 1 billion and up to HUF 50 billion: 1%;

[457] Act LVI of 2012, Sec. 5.
[458] Act LXVIII of 2016, Sec. 111.
[459] Act LXVIII of 2016, Sec. 110(1).

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above HUF 50 billion and up to HUF 100 billion: 3%; and above HUF 100 billion: 7%.

Telecoms are required to assess and pay this extra profit tax by the end of the fifth month following the tax year.

The windfall tax on the airlines industry is payable by the entity that provides passenger and baggage handling services. The amount of the contribution is dependent on the fuel emission of the aircraft and the final destination of each flight and ranges from HUF 1,600 to HUF 15,600 per passenger. This contribution is to be assessed and paid monthly in arrears, by the twentieth day of the month following the subject month. This windfall tax is said to be discontinued from January 1, 2025.

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X. Taxation of Resident Individuals

A. In General

Resident taxpayers are subject to Hungarian tax on their worldwide income. The tax liability of nonresident individuals is limited to income derived in Hungary, or income taxable in Hungary based on an applicable tax treaty or mutuality.[460]

B. Residence

A "resident individual" is:

(i) A Hungarian citizen (with the exception of a dual citizen with no residence or place of stay in Hungary);

(ii) A citizen of an EU Member State residing in Hungary for more than 183 days in the year concerned;

(iii) A citizen of a third country that holds a residence permit.

In addition to the above, the following are also resident individuals:

(i) An individual whose only permanent residence is in Hungary;

(ii) An individual whose center of vital interests is in Hungary if the individual has no permanent residence in Hungary or if Hungary is not the only country in which the individual has a permanent residence; and

(iii) An individual whose habitual residence is in Hungary if the individual has no permanent residence in Hungary or if Hungary is not the only country in which the individual has a permanent residence, and the individual's center of vital interests is unknown.[461]

It is to be noted that where a tax treaty applies, the provisions of the treaty will prevail for purposes of determining the country of residence of an individual.

C. Taxable Income

With the exception of tax-exempt income as defined in Schedule No. 1 to Act No. CXVII of 1995 on Personal Income Tax (the "PIT Act"), all income (or certain portions thereof) received by an individual from others is considered taxable income.

The most common items of tax-exempt income include:

(i) Income supplements provided under the state social welfare system or the social security system;

(ii) Pension benefits;

(iii) Childcare allowances, maternity support and child-rearing allowances;

(iv) Social worker's fees of up to HUF 180,000 per year;

(v) Certain housing subsidies;

(vi) Certain public service contributions;

(vii) Certain scholarships subject to the conditions laid down in the PIT Act;

(viii) Income of private entrepreneurs using flat-rate taxation from such activity, in an amount equal to up to half of the annual minimum wage; and

(ix) The remission of debts by banks, etc.[462]

Income may be classified into two main categories: income belonging to the consolidated tax base; and income taxed separately.

1. Consolidated Tax Base

The consolidated tax base consists of income from self-employment activities, income from activities other than self-employment, and "other income," as defined.

Income from activities other than self-employment typically includes salary derived from an employment relationship, income received by the manager of a company, and income derived from the personal participation of individual members of a business partnership, among other items.[463]

All activities as a result of which an individual receives income and that are not included in the sphere of activities other than self-employment under the PIT Act are considered self-employment activities. This includes, in particular, the activities of private entrepreneurs, small-scale agricultural producers, lessors, appointed auditors, and Members of the European Parliament and representatives of municipal governments.[464]

The concept of "other income" covers all income with respect to which the PIT Act does not contain specific provisions in terms of tax liability. Other income includes, in particular:

(i) Membership fee supplements refunded by a private pension fund from a member's individual account upon the member's return to the social security pension system;

(ii) Sums paid by voluntary mutual pension funds to a member as retirement benefits that are not considered tax exempt;

(iii) Any valuable consideration received by a member of a business association in connection with his or her underlying relationship.[465]

2. Income Taxed Separately

Income taxed separately is set out in an exhaustive list that includes capital gains derived from the sale of movables and real property, interest, dividends, long-term investments, capital gains derived from the transfer of securities, profit realized on swaps, income withdrawn by private entrepreneurs from the business account, and winnings.

Gains from the sale of real property by an individual are tax-exempt if the individual sells the property five years or more after the date of acquisition.[466] Until then, such gains are

[460] PIT Act, Sec. 2(4).

[461] PIT Act, Sec. 3, point 2. "Center of vital interests" means the country to which the individual is primarily tied by the bonds of family and business relations.

[462] PIT Act, Schedule No. 1.

[463] PIT Act, Sec. 24(1).

[464] PIT Act, Sec. 16(1).

[465] PIT Act, Sec. 28(1).

[466] PIT Act, Sec. 62(4).

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taxable in gradually decreasing percentages starting from the second year.[467]

The sale of movable property is tax exempt if the yearly aggregate income derived from such activity does not exceed HUF 600,000.[468]

Interest (including interest paid on savings) is taxable. However, interest from certain investments, such as interest income from single-premium insurance contracts, is tax exempt if the requirements specified in the PIT Act are met.[469]

Under Hungarian Law, capital gains from securities means the proceeds received on the transfer of securities (not including lending arrangements), less the purchase price of the securities and any incidental costs associated with their acquisition.[470] The amount of the gain is determined on the date of the contract for the transfer of the securities. Starting in 2022, income from transactions in "crypto-assets" (defined as digital currency with value or rights, capable of being transferred and stored electronically with the application of distributed ledger or similar technology) became taxable, too.[471] An individual who realized a loss in connection with a transaction in crypto-assets during the tax year, the year preceding the current tax year, or the year two years before the current tax year, and reported the loss on his or her tax return filed for the year in which the loss was realized is entitled to a certain amount of compensation for the loss that may be deducted from the individual's tax liability.

Within the context of the dissolution of a company, the fraction of the assets of the company distributed among its members (shareholders or partners) that is in excess of the combined total cost of acquisition of the securities and the amount of the corporation's liabilities *pro rata* to the holdings, is deemed to be income of the individuals receiving such assets. The amount of income and the commensurate portion of liabilities are determined based on the proposal for the distribution of assets.[472]

Likewise, where proceeds are received by an individual on the termination of his/her participation in a company (not including the dissolution of the business association or the conveyance of the individual's securities), the excess of the combined total of the expenditures incurred in connection with the acquisition of the securities and the liabilities assumed by the individual from the company's liabilities under agreement for settlement in connection with the termination of the participation must be declared as income of the individual receiving such proceeds. In this case, the amount of income and the *pro rata* share of liabilities must be determined based on the records of the company maintained in accordance with the Accounting Act.[473]

[467] PIT Act, Sec. 62(4).
[468] PIT Act, Sec. 58(9).
[469] PIT Act, Schedule No. 1, point 6.6.
[470] PIT Act, Sec. 67(1).
[471] PIT Act, Sec. 67/A.
[472] PIT Act, Sec. 68(1).
[473] PIT Act, Sec. 68(3).

D. Allowances, Credits, and Deductions

1. Self-Employment

Individuals with income from self-employment activities may choose to apply one of two options for cost accounting. Provided the self-employment income is part of a consolidated tax base, the taxpayer can choose to either apply itemized expense accounting or a 10% flat rate deduction.[474]

2. Families

The family tax allowance reduces the personal income tax base of parents based on the number of children they have. In 2023, the monthly allowance is HUF 66,670 for families with one child, HUF 133,330 per child for families with two children, and HUF 220,000 per child for families with three children.[475] (The tax allowance increases by HUF 66,670 per child where the child is severely ill or injured.) The deductible results in tax savings of HUF 10,000, HUF 20,000, and HUF 33,0000 per child, respectively.

The family tax allowance may be claimed only once and may be used by one or both spouses, provided they both have income.[476] If the entire relief cannot be absorbed, 15% of the balance may be deducted from withholdings for social security contributions (18.5%).[477]

Example (1): Calculation of net salary if there is no child:

Monthly gross salary: HUF 300,000

– PIT (15%): HUF 45,000

– Social security contribution (18.5%): HUF 55,500

= Net salary: HUF 199,500

Example (2): Calculation of net salary if there are three children:

Monthly gross salary: HUF 300,000

Maximum tax allowance: HUF 220,000 × 15% = HUF 33,000 per month/per child (or HUF 99,000)

– PIT (15%): HUF 0

– Social security contribution (18.5%): HUF 1,500 (= the social security contribution without the tax allowance – (maximum tax allowance – PIT tax allowance)

= Net salary: HUF 298,500

3. Newlyweds

Married couples may decrease their aggregate tax base by HUF 33,335 on a monthly basis[478] for a maximum period of 24 months if their marriage is the first marriage for at least one of the spouses.

[474] PIT Act, Sec. 17(3).
[475] PIT Act, Sec. 29/A(2).
[476] PIT Act, Sec. 29/B(1c).
[477] PIT Act, Sec. 29/B(6).
[478] PIT Act, Sec. 29/C, Subsec. (3).

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4. Severely Disabled

Effective January 1, 2021, the tax credit previously available for the severely disabled was substituted by a tax base benefit. Individuals who are severely disabled may decrease their aggregate tax base each month by an amount equal to 33% of the prevailing monthly minimum wage (based on the 2023 minimum wage, HUF 76,560) in effect on the first day of the tax year, from the first day of, and for the duration of, their disability.[479]

5. Mothers of Four or More Children

As of 2020, mothers of four or more children are completely exempt from personal income tax on certain kinds of income, including wages, sick leave benefits, entrepreneurial income, and royalties. To qualify for this tax benefit, the mother must be presently raising four or more children or she must have raised four or more children over at least the last 12 years.[480]

6. Young Employees

With effect from January 1, 2022, eligible individuals under the age of 25 are exempt from income tax on income from employment and self-employment.[481] The allowance in any given year is limited to a specific value calculated as the average gross earnings of full-time employees in July of the previous year (as published by the Central Statistical Office), multiplied by the months of entitlement. With regards to employment income, the allowance is also available for income earned during 2021 but paid after January 10, 2022.[482]

7. Young Mothers

From 2023, a new tax base allowance is available to young mothers. A "young mother" is a person whose entitlement to family allowances in respect of her unborn child or her legitimate or adopted child is opened on the day before she reaches the age of 30.[483]

The amount of the monthly benefit for mothers under 30 years of age will not exceed the amount of the average gross earnings of full-time employees in the national economy for the month of July of the year preceding the year in question, as officially published by the Central Statistical Office. (Currently: HUF 499,952 per month of entitlement, which represents a tax saving of HUF 74,993 and HUF 5,999,424 for a full year of entitlement, providing a total tax saving of HUF 899,914.)

The month of entitlement is the month in which the young mother is entitled to the family allowance as defined above, but not earlier than the month following the month in which she reaches the age of 25. The benefit may be claimed up to the last month of entitlement in the year in which the young mother reaches the age of 30.

The tax allowance for young mothers is available with respect to her income from activities other than self-employment (with the exception of severance payments) and certain self-employment activities (e.g., income from small scale farming).

8. Investment and Pension Funds

A tax incentive applies to encourage self-care and to decrease the burden on the Hungarian social security system. Individuals who set up retirement accounts or make contributions to qualifying accounts may instruct the tax authorities to transfer, by way of refund, a certain portion of the income tax paid by them to such accounts. Qualifying accounts may be held: (i) in a voluntary mutual fund; (ii) in an individual retirement account; or (iii) under a pension insurance contract. The relevant portion that may be transferred is generally 20% of the tax paid, capped at HUF 130,000 per year per account. However, in the case of an individual who has provided for the transfer of a specific portion of his or her tax to all three types of qualifying accounts, the total sum transferred by the tax authorities may not exceed (in the aggregate) HUF 280,000 per year.[484]

9. Charitable Donations

Individual taxpayers may submit a request to the tax authority to donate 1% of their paid personal income tax to a registered non-profit organization and/or a church or religious institution (1+1%).[485] The amount is deducted from the taxpayer's assessment. The request may be made electronically, by designation on the income tax return, or separately by submitting a declaration.

E. Tax Rates and Calculation of Taxable Income

The personal income tax rate is 15% of the tax base both for income that is part of the consolidated tax base and income that is taxed separately.[486] However, different tax rates apply to income of private entrepreneurs (see X.H., below) and income from qualifying long-term investments. For the latter, the tax rate is 0% if the investment is maintained for the statutory period of five years or 10% or 15%, depending mainly on the date the investment is terminated if it is cancelled before reaching maturity.[487]

F. Assessment and Filing

The tax on income included in the consolidated tax base and the entrepreneurial income tax are paid in advance.[488] The payer of the income must assess, deduct, declare, and pay the tax to the tax authority in the month following the payment of the corresponding income.[489] If there is no payer, the individual recipient of the income must declare and pay the advance tax on a quarterly basis.[490]

An individual is required to file an income tax return for the tax year based on the calendar year. The deadline for filing a tax return is May 20 of the year following the relevant year. For an individual entrepreneur engaged in business activities, the deadline is February 25 of the year following the relevant

[479] PIT Act, Sec. 29/E.
[480] PIT Act, Sec. 29/D.
[481] PIT Act, Sec. 29/F.
[482] PIT Act, Sec. 101(2).
[483] PIT Act, Sec. 29/G.
[484] PIT Act, Secs. 44/A–44/F.
[485] PIT Act, Sec. 45.
[486] PIT Act, Sec. 8(1).
[487] PIT Act, Sec. 67/B.
[488] PIT Act, Sec. 46(1).
[489] PIT Act, Sec. 46(3).
[490] PIT Act, Sec. 46, Subsec. (9).

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year. Employers withhold income tax on salaries paid and are required to file monthly tax returns showing advance tax computed and remitted. A nonresident employee in Hungary must pay an income tax advance by the twelfth day of the month following each quarter.[491]

Note: Each year the Hungarian tax authority prepares draft PIT tax returns based on the data available to them. These draft tax returns, however, may not necessarily be complete or correct mainly because the tax authority does not have all the information to assess an individual's tax liability completely. Individual taxpayers can view their tax returns from March 15 of the year following the tax year on the eSZJA website at www.nav.gov.hu. The draft can be modified, approved, and submitted. Unless action is taken by the taxpayer, the draft tax return will become final upon the filing due date of the tax return.

G. Audits and Limitations Period for Assessment and Collection

The audit process for individuals is generally the same as for other taxpayers, except that certain preferential rules apply, as discussed below.

An individual taxpayer who is unable to exercise his or her rights may, subject to a few exceptions, request a one-time maximum 60-day postponement of the audit procedure or suspension of the audit until capacity to do so is restored.[492]

In addition, to protect the privacy of individuals, a tax inspector is only entitled to conduct an inspection at the residence of an individual who is not engaged in business activities if: (i) the tax liability is related to the residence as an asset; (ii) the income of the taxpayer concerned is derived from use of the residence; or (iii) there is a reasonable suspicion that the residence is used for unauthorized entrepreneurial activities. Furthermore, tax abatement is generally not available to taxpayers other than individuals (although such taxpayers may benefit from the reduction or cancellation of surcharges or penalties).[493] An individual may be eligible not only for cancellation of surcharges or penalties, but also for cancellation of the existing tax liability, if paying the liability would seriously endanger the livelihood of the taxpayer and close relatives living in the same household.[494]

Furthermore, if an individual applies for deferral of a tax payment or files a request to be allowed to pay the tax due in multiple installments, the tax authorities may grant these concessions even where the general requirements for such payment facilities are not met (i.e., that the payment difficulty is not attributable to the taxpayer and is of a temporary nature), if paying the tax would be an unreasonable burden for the taxpayer and his or her family.[495] In addition, for the payment of tax debts that do not exceed HUF 1 million individuals are automatically eligible to pay the tax in 12 equal monthly installments once in each year.[496]

Furthermore, with respect to the annual motor vehicle tax, individual taxpayers, including those who are engaged in entrepreneurial activities and obliged to pay VAT, may request the tax authority to authorize the payment of this tax in installments for up to five months without extra charges, once a year, provided the request is submitted by June 30 of the relevant tax year.[497]

H. Private Entrepreneurs

Private entrepreneurs may pay entrepreneurs' personal income tax (PIT) and dividend tax under the general rules or may opt for lump-sum (or flat-rate) taxation if the relevant statutory requirements are met.[498]

The threshold to make an election for flat-rate taxation has been abolished as of 2023. However, if an entrepreneur has revenue that exceeds 10 times the value of the minimum wage for 12 months (HUF 27.84 million in 2023) in the current tax year, then the entrepreneur must pay their taxes pursuant to the normal entrepreneurial tax regime retroactively as of the first day of the tax year. (The threshold is increased to 50 times the value of the minimum wage for 12 months (HUF 139.2 million) for a private entrepreneur engaged solely in retail activities.)[499] As a rule, taxpayers electing for flat-rate taxation use a 40% ratio, leaving 60% of the revenue derived in a tax year as taxable income. A different expense ratio applies for certain specific occupations. For example, for taxi drivers, certain mechanics, providers of laundry services, construction workers it is 20%, while for retailers, small-scale farmers only 10% of revenue qualifies as taxable income. The tax rate where flat-rate taxation is opted for is 15%.

Comment: With the itemized lump sum tax (KATA) regime available for a much smaller group of taxpayers now, the majority of entrepreneurs previously opting for the KATA regime now opt for this kind of taxation.

The PIT base of an entrepreneur who did not elect for lump sum taxation is based on the entrepreneur's total income, after deducting costs and applying the adjustments prescribed by law. The taxation of private entrepreneurs, including the definition of income and deductible business expenses, is similar to the taxation of resident companies.

The PIT Act defines the typical income of an entrepreneur as including the following items:

(i) Amounts received as consideration for products, goods and services supplied, or amounts received as an advance of such consideration or settled by a bill of exchange; and consideration received in-kind (with markups, discounts, price subsidies and consumer taxes included in all cases), and any extra charges for packaging, shipping, or delivery of the goods concerned;

(ii) Consideration received on the sale of, or the fair market value of (if the latter is greater), tangible assets used exclusively as operational assets, including retired tangible assets, intangible assets, materials, and semi-finished products, if the entrepreneur recognized the purchase or

[491] Act CL of 2017, Schedule Nr. 3/I.
[492] Act CLI of 2017, Sec. 97(5).
[493] Act CLI of 2017, Sec. 102(1).
[494] Act CL of 2017, Sec. 201(1).
[495] Act CL of 2017, Sec. 198(4).
[496] Act CL of 2017, Sec. 199(1).
[497] Act CL of 2017, Sec. 199(1a).
[498] PIT Act, Sec. 49/A(1).
[499] PIT Act, Sec. 50. and Sec. 52(1).

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production costs of such assets among his or her expenses in any year, or wrote-off depreciation allowances on such assets;

(iii) Interest received (particularly interest credited to a domestic current account);

(iv) Amounts received by way of indemnity, default interest, fines and penalties, as well as amounts received as refunds of paid indemnity, interest, fines and penalties, unless previously claimed as costs;

(v) Any government subsidies that have been received;

(vi) The fair market value of manufactured or purchased products and services rendered or purchased, if used by the private entrepreneur for his or her own purposes or surrendered partially or fully to third parties for no consideration, provided the entrepreneur claimed the related costs in any year. However, the value of using the products for own purposes or fully or partially surrendering to third parties for no consideration need not be added to taxable income, if the private entrepreneur:

(I) Did not claim the related costs as expenses, deducted the costs from total expenses, or provided the product or services for no consideration to an individual subject to tax liability; or

(II) Donated the products or services in connection with a natural disaster or other public emergency;

(vii) Refunds from the tax authorities, calculated as the difference between advanced payments of taxes and social security contributions made by the entrepreneur and the overall tax liability of the entrepreneur, provided the entrepreneur claimed taxes as an expense in any year;

(viii) Compensation and indemnification for damages received, including amounts received based on liability insurance;

(ix) Premiums paid on insurance policies claimed as a cost with respect to the value of insurance payments.[500]

As with companies, the following costs may be deducted from entrepreneurial income, provided that the deductions do not exceed the amount of one's entrepreneurial income:

(i) Monthly wages paid to employees with at least a 50% disability, to the extent such payments do not exceed the prevailing monthly minimum wage in effect as of the first day of the month concerned;

(ii) The prevailing minimum wage paid to each student per month at the rate of 24% and any fraction thereof in connection with students in apprentice training programs at vocational school;

(iii) The amount of social contribution tax paid on behalf of: a vocational school student who has successfully graduated in further and continuing employment; a previously unemployed person; a person released from prison within six months from the date of release; or a person on parole for the duration of an employment assignment not to exceed more than 12 months;

(iv) Subject to certain conditions, the costs of basic and applied research and any experimental development that is expensed by the entrepreneur and carried out within his or her scope of activities. Alternatively, if such expenses are recorded as investment costs and applied to experimental development, the entrepreneur may deduct the amount of depreciation claimed against the asset with respect to which the expenses were capitalized. Deductions are limited to HUF 50 million or three times the amount of the expenses (whichever is greater) if the research is carried out in conjunction with a research facility created by the Hungarian Scientific Academy or a higher education institute;

(v) For a private entrepreneur with fewer than 250 employees, there is a small business allowance, which may not exceed the difference between the taxpayer's entrepreneurial revenue and expenses. The allowance may also not exceed the combined value of: investment expenses with respect to tangible assets that directly serve the entrepreneur's operations, were not previously commissioned or validated, and are used exclusively for business purposes; and the renovation costs of land and buildings that directly serve the entrepreneur's operations in the amount claimed for the tax year and that are added to the value on which the depreciation allowance is based;

(vi) The lesser of 50% of entrepreneurial income in excess of operating expenses claimed for the tax year or HUF 500 million per tax year, as amounts that are set aside for improvements, provided the funds are designated as such in the tax return and supported by business records;

(vii) For a private entrepreneur with fewer than five employees on the first day of business operations, a tax credit calculated as follows:

[(the average number of employees employed during the current tax year) − (the average number of employees employed in the previous tax year)] × (the annual average of the prevailing minimum wage in effect on the first day of the tax year)

In all cases, the deductions above are also subject to the condition that the entrepreneur has no outstanding tax debts owed to either the state or local tax authorities on the last day of the applicable tax year.[501]

There are also certain additions to entrepreneurial income, as follows:

(i) For a private entrepreneur opting for flat-rate taxation, the amount established by the entrepreneur in connection with inventory as determined under the provisions on the termination of entrepreneurial activities on the commencement of flat-rate taxation;

(ii) The fair market value of stock transferred to a fiduciary within the framework of a fiduciary asset management

[500] PIT Act, Schedule No. 10, Sec. I.

[501] PIT Act, Sec. 49/B(6).

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contract concluded by a private entrepreneur acting as principal; and

(iii) An amount calculated as follows:

[(the average number of employees employed during the current year) − (the average number of employees employed in the previous tax year)] × (the annual average of the prevailing monthly minimum wage in effect on the first day of the previous tax year) × 1.2, not to exceed (the amount of all employment tax credits claimed previously during the past three tax years) × 1.2]

The PIT Act also contains a list of typical expenditures that can be claimed as deductible costs, including the following:[502]

(i) Entrepreneurial dividend withdrawals;

(ii) Expenditure directly related to the gainful activity of the entrepreneur and any advances paid;

(iii) Depreciation allowances for tangible and intangible assets;

(iv) Expenditure on the purchase of materials and goods, as well as packing materials (less the consideration received for redeemable packing material when returned to suppliers), and shipping and delivery costs;

(v) Expenditure of less than HUF 200,000 on the purchase or manufacture of tangible and intangible assets used exclusively in an entrepreneur's business operations and the costs of repair and maintenance for the continuous, uninterrupted and reliable operation of tangible and intangible assets used exclusively in the entrepreneur's operations, irrespective of their acquisition value;

(vi) The following sums payable to individuals employed by a private entrepreneur:

- Wages and related legally required dues;
- Mandatory allowances and payments due to employees and payable by an employer as prescribed by law or based on a collective agreement or employment contract;
- Supplements of employees' private pension fund membership fees based on the unilateral assumption of obligations; and
- Where employees do not qualify to receive pension benefits due to insufficient years of employment, amounts paid to them under an agreement to make a one-time payment to buy into the pension plan so as to allow such employees to be eligible for pension benefits; and private pension fund membership fees;

(vii) Premiums paid on personal insurance policies naming an employee as the beneficiary (in the case of taxable insurance premiums, provided the beneficiary is not the private entrepreneur), the employer's contributions and related public dues on such contributions, where the premiums are paid to a voluntary mutual insurance fund by a private entrepreneur on behalf of an employee;

(viii) A private entrepreneur's own social contribution tax or healthcare services contribution not paid based on an agreement;

(ix) Guarantee and warranty costs, as confirmed by the relevant customer or purchaser;

(x) Property, liability, and risk insurance premiums paid to secure income and the conditions for deriving income;

(xi) Interest paid on bank loans (credits) taken out in connection with entrepreneurial activities, excluding interest included in the purchase price of tangible assets;

(xii) Taxes paid during the tax year to the central budget and local governments exclusively in connection with the entrepreneurial activity concerned, duties, official fees, customs duties, customs clearance fees, court charges, default interest, penalties and surcharges payable if the taxpayer files an amended return and adjusts the amount of income reported, unless included in the purchase price of a tangible asset;

(xiii) Rental payments with respect to shops, workshops, farm buildings or offices, as well as the costs of heat, electricity, technology and telephones, and other fees;

(xiv) The cost of telephones, mobile telephones, faxes, CB radios and telex units, and applicable installation fees;

(xv) The cost of specifications and blueprints, fees for subcontract work, payments to subcontractors, and service charges (such as advertisement costs);

(xvi) The cost of work clothing, protective devices, and occupational safety, accident prevention, and environmental protection equipment;

(xvii) The cost of travel and accommodation for official and business trips, including such costs with respect to foreign assignments; and

(xviii) Verified amounts paid by a private entrepreneur for training under certain conditions.

Certain expenditures are explicitly excluded from entrepreneurial expenses. These include:

(i) Expenditure connected in any way or form with the personal or family needs of a private individual;

(ii) Penalties (fines, default interest, etc.) imposed as a result of tax evasion or any violation of other legal rules established in the course of a financial inspection (audit), except for the self-revision surcharge and tax arrears with respect to taxes that could have been claimed as costs if actually incurred;

(iii) Amounts repaid on a loan taken out for any purpose whatsoever;

(iv) Income tax paid by a private individual, as well as payments with respect to liabilities for which a private individual has claimed tax reductions;

(v) Membership fees and insurance premiums;

[502] PIT Act, Schedule No. 11, Sec. I.

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(vi) Charitable donations;

(vii) Non-repayable assistance received from an employer, including sums granted to a private individual as aid; and

(viii) Foreign taxes paid by a private individual on his or her income that are comparable to PIT.[503]

The rate of PIT imposed on a private entrepreneur is 9%.[504]

A small business tax credit may be deducted from the PIT payable by certain private entrepreneurs, but the credit may not exceed 70% of the PIT payable. Specifically, certain private entrepreneurs with fewer than 250 employees are eligible for tax credits for the purchase and manufacture of tangible assets (that are purely used for business purposes) that are financed by a financial institution under a loan contract (including finance leasing). The tax credit is based on the interest on the loan. The tax credit rate is 100% of the interest paid during the tax year for credit agreements irrespective of their date.[505]

If the entrepreneur does not place a tangible asset for which a small business credit was claimed into operation, sells it or terminates his or her business activity by the last day of the fourth tax year following the year for which the credit was claimed, the amount of tax payable will be calculated by multiplying by two the tax rate in effect for the year when the credit was claimed.

In addition to PIT, entrepreneurs must pay the entrepreneurial dividend tax based on the amount of entrepreneurial income after payment of the entrepreneurial income tax (the "after-tax entrepreneurial income"). Entrepreneurial dividend tax is imposed at the rate of 15%.

Private entrepreneurs are required to assess and declare the tax on the entrepreneurial dividend base in their tax returns and pay it by the deadline prescribed for filing their tax returns (which is February 25 of the year following the tax year).[506]

The entrepreneurial dividend base is the after-tax entrepreneurial income as adjusted by certain additions and deductions. In determining the after-tax entrepreneurial income for purposes of calculating the dividend base, the small business credit is disregarded.

The following items are added to the after-tax entrepreneurial income:

(i) In certain circumstances, a percentage of the excess depreciation allowance that has been written off from the value of a tangible asset is added where the asset has been transferred free of charge. Whether such an addition is made also depends on when the asset was transferred in comparison to when the after-tax deduction from entrepreneurial income for the acquisition of the asset was taken. The addition is as follows: (i) 100% if the asset is transferred within one year of the acquisition of the asset; (ii) 66% if taken after one year but before two years; (iii) 33% if taken after two years but before three years; and (iv) 0% if taken after three years."

(ii) The respective percentages (see above at (i)) of the excess depreciation allowance, at the date on which the private entrepreneurial activities are terminated, depending on whether they are terminated after one, two, three or more years.

(iii) If a private entrepreneur reduces his/her entrepreneurial dividend base by investment costs in a previous year, the investment costs increase the tax base in the year in which depreciation is taken on the tangible asset to which the investment relates.

(iv) Apart from the addition referred to above in (iii), in the fourth year following a year in which a private entrepreneur reduces his/her entrepreneurial dividend base by investment costs, such investment costs increase the tax base after four years or earlier in the event that the private entrepreneurial activities are terminated before four years have elapsed.[507]

The combined amount of the after-tax entrepreneurial income and the additions listed above, may be reduced by the following (the amount of the reduction being limited to that combined amount):

(i) The total amount of depreciation allowances written off from tangible and intangible assets during the tax year (if the private entrepreneur started the write-off in the tax year concerned);

(ii) Fines, penalties, etc. related to tax evasion or other illegal activities that were imposed as a result of misconduct revealed by an audit of the private entrepreneur's business or financial affairs; and

(iii) Investment costs (as supported by the relevant documentation), provided there has been no write-off of the assets invested in.[508]

It should be noted that the tax base may be reduced by depreciation with respect to tangible assets. In the case of real property, buildings may be depreciated, but not land. The purchase price of land does not qualify as an investment cost and, therefore, the purchase price of the land may not reduce the tax base.

Example: It is assumed that a private entrepreneur derived income of HUF 100 million in 2023, and his business expenses for the same period amounted to HUF 45 million. He employed a disabled person at a wage of HUF 300,000/month. He took out a loan of HUF 5.5 million from a bank on March 1, 2022, to buy machinery. He immediately put the machinery into production and applied a 50% depreciation rate. He paid interest of HUF 200,000 in the tax year.

[503] PIT Act, Schedule Nr. 11. Point IV.
[504] PIT Act, Sec. 49/B(9).
[505] PIT Act, Schedule Nr. 13.
[506] PIT Act, Sec. 49/C(7).
[507] PIT Act, Sec. 49/C(2).
[508] PIT Act, Sec. 49/C(6).

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1.	Entrepreneurial income (HUF)		100,000,000
	Items decreasing the entrepreneurial income		
2.	Employment of disabled person	12 × 232,000[509]	2,784,000
3.	Small business credit	5.5 million (which is lower than 30 million and does not exceed 100−45 million)	5,500,000
4.	**Adjusted entrepreneurial income**	(1) − (2) − (3)	91,716,000
5.	Deductible expenses		45,000,000
6.	Depreciation	5,500,000 × 50% × (305/365)[510]	2,305,479
7.	**Business expenses**	(5) + (6)	47,305,479
8.	**Entrepreneurial personal income tax base**	(4) − (7)	44,410,521
9.	Entrepreneurial personal income tax	(8) × 0.09	3,996,947
10.	Small business tax credit	Lesser of: 200,000 or 3,996,947 × 70%	200,000
11.	**Entrepreneurial personal income tax payable**	(9) − (10)	3,796,947
12	After-tax entrepreneurial income	(8) + (3) − (11)	46,113,571
13.	Deduction: machinery placed into operation in the tax year	(3) − (6)	3,194,521
14.	Dividend tax base	(12) − (13)	42,919,053
15.	**Dividend tax**	(14) × 15%	6,437,858

[509] Minimum salary for 2023.
[510] Pro-rated for the fraction of the year.

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XI. Taxation of Nonresident Individuals

A. In General

The definition of a resident for Hungarian tax purposes is discussed in X.B., above. The residence status of an individual who is a resident of only one country, under that country's domestic rules, is unambiguous and requires no further analysis.

If, however, under the domestic law of both Hungary and another country, an individual may be regarded as resident in both Hungary and the other country, the applicable tax treaty (if any) must be taken into account. Most of Hungary's treaties are based on the OECD Model Convention. Accordingly, where an individual's status cannot be determined based on the respective domestic rules of Hungary and the treaty partner country, the individual's permanent home, center of vital interests, habitual abode, and nationality (in that order) are the deciding factors. The same criteria are adopted in the definition of a resident individual contained in Act No. CXVII of 1995 on Personal Income Tax (the "PIT Act") (see X.B., above). If these criteria are insufficient to determine the residence of an individual, the competent authorities of the two countries concerned will settle the question by mutual agreement.

In the absence of an applicable tax treaty, an individual who qualifies as a resident of two countries may be taxed in both countries on the same income.

B. Employment Income

1. Treaty Countries

As a general rule, if an individual's place of employment is different from his or her country of residence, the individual's income will be taxable only in the country in which the employment income is sourced.[511] There is an exception to this rule, under which Hungarian-source employment income derived by a nonresident individual is not taxable in Hungary if:

(i) The nonresident individual is present in Hungary for a period (or periods) not exceeding in the aggregate 183 days in any 12-month period;

(ii) The salary of the nonresident individual derives from a foreign employer; and

(iii) The salary of the nonresident individual is not borne by a permanent establishment (PE) that the foreign employer has in Hungary.[512]

It should be noted that the employer is not necessarily identical to the entity named in the employment agreement: an "integrity test" must be applied to determine who the employer is. In addition to a formal, legal approach, the integrity test adopts an economic approach to the term "employer." The following factors are important indicators that an employment should be deemed to pass the economic test, i.e., that an entity (the "host entity") should be regarded as the employer of the employee concerned:

(i) The employee is integrated into the business of the host entity;

(ii) The employee is under the control of the host entity;

(iii) The activities of the employee form part of the business of the host entity; and

(iv) The risks associated with the employee's activities are borne by the host entity.

Thus, for example, if a nonresident individual is assigned to Hungary to work for a Hungarian corporation for only four months, and the activity of the individual is closely integrated with the activity of the Hungarian corporation, then the Hungarian corporation will be deemed to be the economic employer, so that the employment income of the individual will be taxable in Hungary.

2. Non-Treaty Countries

If there is no applicable tax treaty between Hungary and the country of residence of a nonresident individual employed in Hungary, then only the domestic law of Hungary and the other country will apply. A nonresident individual for Hungarian tax purposes is taxable in Hungary only on his or her income derived in Hungary.

C. Business Income

Under Act XXIV of 1988, as a general rule, a foreign national may only carry on business activity on a regular basis in Hungary: (i) as a private entrepreneur (see X.H., above); (ii) through a corporation organized under the laws of Hungary (see V., above); or (iii) through a branch or representative office (see VII., above).[513] Certain types of activities are exempt from this general rule, provided the foreign national carrying them on did not hire any employees for his/her activities in Hungary (this includes the assignment or hiring-out of an employee or agent employed in a foreign country to perform work in Hungary). The activities concerned are:

(i) The activities of lecturers and research activities carried on at a school or institute of higher education;

(ii) Artistic performances;

(iii) Professional sporting activities;

(iv) Activities limited to the supply of goods and services acquired by the foreign national in a foreign country and exported to Hungary, provided the export is accomplished in the foreign national's absence by means of a commercial card issued abroad by the foreign national's country of residence; and

(v) The management of real estate or natural resources in return for consideration or the transfer, sale, and contribution in-kind of any rights in immovable property or natural resources.[514]

These types of activities do not require a foreign national to establish a legal or tax presence in Hungary.

Business income is generally taxable in the country of residence of the individual deriving the income.

[511] OECD Model Convention, Art. 15(1).
[512] OECD Model Convention, Art. 15(1).
[513] Act XXIV of 1988, Sec. 3(1).
[514] Act XXIV of 1988, Sec. 3(2).

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D. Investment Income

Dividends are generally taxable in the state of residence of the individual to whom they are distributed.[515] However, Hungarian-source dividends paid to a nonresident of Hungary may also be taxed in Hungary by way of withholding at source. If the beneficial owner of the dividends is a nonresident who is a resident of a treaty partner country, the rate of tax so charged may not exceed the rate provided under the applicable tax treaty. (Conversely, if the beneficial owner qualifies as a resident of Hungary, foreign-source dividends distributed to him/her will be taxable in Hungary but may also be subject to withholding in the country of residence of the company distributing them at the maximum rate provided for under the treaty between Hungary and that country, if any.) In the absence of a tax treaty, dividend tax calculated at the tax rate applicable to dividends (15%) distributed to Hungarian residents will be withheld from dividends paid to a nonresident by the Hungarian company paying the dividends. This will also be the case, where a nonresident who is resident in a treaty partner country fails to substantiate his or her residence in that country.

In a tax treaty context, the partial double taxation that arises as a result of the rules described in the previous paragraph is usually resolved under the terms of the applicable treaty regarding the avoidance of double taxation, through either the exemption or the credit method. Under the latter method, the source country tax paid on the dividends may be deducted from the residence country tax payable on the income of the dividend recipient. If the Hungarian tax withheld from dividends paid to a nonresident individual is withheld at a rate higher than the maximum rate allowed to be imposed under a treaty, the nonresident individual may submit an application for refund of the excess to the Hungarian tax authorities, with a certificate from the payer of the dividends and a certificate of the individual's residence in the treaty partner concerned attached to the application. The tax authorities will remit the excess amount to the bank account indicated by the individual.

Similar rules apply to interest income derived by a nonresident individual who is a resident of a treaty partner country: as a general rule, interest is taxable in the country of residence of the recipient but Hungary may withhold tax on the interest payment at a rate not exceeding that specified in the applicable tax treaty.[516] Where no treaty applies, withholding tax at the rate of 15% applies to interest paid to a nonresident individual.

As far as royalties are concerned, the general rule is that a nonresident individual resident in a treaty partner country is not taxed on Hungarian-source royalties. The right to tax generally lies with the country of residence. Even where no treaty applies, no withholding tax is imposed on royalties paid to a nonresident individual under Hungarian domestic law. However, Hungarian-source royalties paid to a nonresident individual may be treated as professional income and taxed by way of assessment under the same rules as apply to resident individuals.

E. Capital Gains

Under Hungarian domestic law, a nonresident individual is generally not subject to Hungarian tax on capital gains arising from the disposal of securities and other movable property. A nonresident individual is subject to tax at the rate of 15% on capital gains arising from the alienation of real property situated in Hungary or the transfer of an interest in a Hungarian real property holding company as defined in IV.G., above. For this purpose, the transfer of an interest includes not only the disposal, but also the lending, of shares and the withdrawal of investments. The tax is collected by way of withholding.

Under Hungary's tax treaties that follow the OECD Model Convention, gains derived by a nonresident from the alienation of immovable property situated in Hungary *may* be taxed in Hungary.[517] Gains derived by a nonresident from the alienation of shares deriving more than 50% of their value from immovable property situated in Hungary may also be taxed in Hungary. These rules mean that such gains may be taxed by both Hungary and the treaty partner country concerned and the provisions aimed to avoid double taxation will come into play. Other capital gains may only be taxed by the country of which the individual is a resident.[518]

F. Method of Taxation

In the absence of an applicable tax treaty, Hungarian law does not provide any special rules for the taxation of dividends, interest, and royalties derived in Hungary by a nonresident individual, i.e., generally such an individual is required to file the same tax returns as a resident individual (see X.F., above). At the same time, the Hungarian paying agent is required to assess and deduct (withhold) tax from payments of Hungarian taxable income to a nonresident individual and pay it over by the 12th day of the month following the date of payment. If the nonresident individual is resident in a treaty partner country, the paying agent will deduct tax according to the terms of the relevant tax treaty provided the nonresident supplies the certificates and statements required by the pay-out date. No tax will be deducted, declared, or paid on income that is exempt from taxation under a treaty, provided the nonresident recipient verifies that he or she is a resident of the relevant treaty partner country.

If tax is withheld from a payment to a nonresident individual at a rate that is higher than that allowed by an applicable tax treaty, the nonresident may submit an application for a refund of the excess tax withheld to the state tax authority[519] together with a certificate from the payer and a certificate of residence (in the relevant treaty partner country). The tax authority will remit the excess amount withheld to the account indicated by the nonresident individual.[520]

A nonresident individual posted to perform work on a temporary assignment at the main office or establishment of a legal person or an unincorporated business association in Hungary is required to file his/her tax return for the tax year by May 20 of the following year, where a paying agent is not required to

[515] OECD Model Convention, Art. 10(1).
[516] OECD Model Convention, Art. 11(1).
[517] OECD Model Convention, Art. 13(1).
[518] OECD Model Convention, Art. 13(5).
[519] This is done via Form No. ATVUT17, which is available online through the website of the state tax authority: www.nav.gov.hu.
[520] PIT, Schedule No. 7, point 4.

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withhold tax at source on payments made to the individual or the individual does not receive the income taxable in Hungary through a paying agent. If such an individual leaves Hungary without any intention to return during the tax year, the tax will be assessed by the tax authorities (instead of a tax return being filed by the individual). When an individual leaves the country in these circumstances, the tax authorities must be notified 30 days in advance of the individual's departure and the documents necessary to determine the individual's tax liability must be enclosed with the notification.[521]

[521] PIT, Schedule No. 7, point 13.

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XII. Estate/Inheritance/Transfer and Gift Tax

A. Inheritance Tax

Hungary imposes an inheritance tax rather than an estate tax.

1. In General

Hungarian inheritance tax law applies with respect to assets located in Hungary without exception. It also applies to movable assets located abroad that are inherited by a Hungarian citizen, a non-Hungarian citizen residing in Hungary, or a legal entity established in Hungary if no inheritance tax is payable in the country in which the assets are situated. The burden of proof regarding the payment of foreign duty or tax lies with the heir.[522]

The Hungarian inheritance tax applies to all inherited assets located in Hungary, without exception, and to movable assets located abroad in certain circumstances. The inheritance tax provisions do not apply to real property located abroad.

2. Taxable Base

a. Taxable Property

Any property acquired based on inheritance, including by way of a redemption of beneficial ownership, devise or bequest, a compulsory share of inheritance and a gift *mortis causa,* is subject to inheritance tax.[523] The tax base is the net worth (market value) of the inheritance received by any one heir or legatee.[524]

b. Exempt Transfers

There are numerous exemptions from the inheritance tax, including but not limited to the following items

(i) For assets inherited by the testator's next of kin (including where the relationship is based on adoption), sibling or the surviving spouse;

(ii) An amount of HUF 20 million from the net worth of the share of the inheritance received by the testator's stepchildren and foster children or stepparents and foster parents;

(iii) For an inheritance (legacy) bequeathed for scientific, artistic, educational, cultural or public welfare purposes;

(iv) For inherited movable assets without any exclusion, to the extent of a market value up to HUF 300,000 per heir irrespective of the heir's legal status or relation to the testator;

(v) For an inheritance of ownership rights (ownership share) to land suitable for the construction of a residential building, provided that the heir undertakes to build a residential building on such inherited real property within four years of the operative date of the grant of probate, and the net floor space of the residential suite(s) contained in the building is at least 10% of the permissible building space fixed in the general zoning plan; and

(vi) For the acquisition of debt securities issued by any European Economic Area (EEA) member state.[525]

c. Deductible Liabilities

In calculating the net worth of the inheritance for purposes of determining the inheritance tax base, the estate debts and the value of any other encumbrances are deducted from the market value of the assets acquired by each heir on a pro rata basis. The fees payable to the administrator and the executor appointed during the probate proceedings are also considered to be estate debts.[526]

The estate charges pertaining to individual assets that are subject to payment of inheritance tax are deducted from the market value of the asset in question. Each heir takes into account his or her pro rata share of the estate charges related to the entire estate in proportion to the taxable and non-taxable portion of the assets inherited.[527]

Example: The stepdaughter of the testator inherits an otherwise taxable asset worth HUF 40 million and pays HUF one million in funeral expenses. The funeral expenses are to be allocated proportionately between the non-taxable and the taxable parts of the inheritance, i.e., the taxable amount is decreased by HUF 500,000. This is because HUF 20 million of the transfer is tax-exempt, allowing 50% of the expenses to be deducted.

The existence of any debts and other charges must be duly documented by the heirs (legatees), except for the decedent's funeral expenses for which a reasonable amount may be deducted without providing supporting proof.

d. Exempt Persons

Certain individuals and organizations are exempt from inheritance (and gift) tax. The list of such persons is set out in Section 5 of Act No. XCIII of 1990 and includes:

(i) The State of Hungary;

(ii) Municipal governments and their associations;

(iii) The health insurance administration agency and the pension insurance agency authorized to manage the National Pension Insurance Fund;

(iv) The National Bank of Hungary;

(v) The North Atlantic Treaty Organization (NATO), the armed forces of the Parties to NATO and other nations participating in the Partnership for Peace that are stationed in Hungary, and the military command posts set up within the framework of NATO, including their non-Hungarian staff and military and civilian personnel who are employed by such armed forces and command posts, with respect to duties related to the service obligations of such personnel;

[522] Act XCIII of 1990, Sec. 2(1).
[523] Act XCIII of 1990, Sec. 8(1).
[524] Act XCIII of 1990, Sec. 13(1).
[525] Act XCIII of 1990, Sec. 16.
[526] Act XCIII of 1990, Sec. 13(2).
[527] Act XCIII of 1990, Sec. 13(3).

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(vi) The European Union and its institutions, bodies, agencies and separate funds; and

(vii) Institutional councils.

Certain organizations (for example, the State of Hungary, municipal governments, publicly financed bodies, religious organizations, foundations and certain nonprofit business associations) are granted a full exemption from inheritance and gift tax. The exemption is conditional on the organization concerned not generating a corporate income tax (CIT) liability with respect to income derived from an entrepreneurial activity (or in the case of a publicly financed body, incurring no obligation toward its central budget) during the calendar year preceding the accession of wealth or initiation of proceedings.[528]

3. Tax Rates

The general inheritance tax rate is 18%. As regards the acquisition of residential property and related rights, the inheritance tax rate is 9%,[529] Whereas certain other types of assets, such as motor vehicles and arable land, are subject to different rates.

B. Gift Tax

1. In General

Unless an applicable estate and gift tax treaty provides otherwise, Hungarian gift tax applies to movable tangible property and real property in Hungary and related rights, as well as to shares in the capital of a company with real property holdings in Hungary.

Unless otherwise provided for by a tax treaty, the acquisition of automobiles and trailers and related rights is subject to Hungarian gift tax if the automobile or trailer concerned was or will be registered in Hungary.

2. Taxable Base

a. Taxable Property

The following kinds of property are subject to gift tax:

(i) Gifts of real property;

(ii) Gifts of movable property if the market value of the property granted to any one donee exceeds HUF 150,000; and

(iii) The granting of a right, the surrender of a right, the exercise of a right for no consideration or the waiver of a right for no consideration.[530]

As in the case of inheritance tax, the tax base is the net worth of the gift, which, in turn, is the market value of the asset acquired less the applicable deductions.

The transaction subject to gift tax must generally be reported by the donee. In the case of gifts of real property, the transfer is declared at the same time as the petition to register the transfer of title with the land registry. Gifts of movable property and rights must be declared to the tax authority on a special form (AVBA) within 30 days of the date of the transaction. Non-taxable transfers must also be declared, though this usually does not happen often in practice. The market value of the property is determined by the state tax authorities.[531]

b. Exempt Transfers

There are numerous exemptions from the gift tax, including but not limited to the following items:

(i) The receipt of any gift given for scientific, artistic, educational, cultural or public welfare purposes, and the acquisition of property based on a public commitment (foundation), as well as acquisitions of pecuniary value from public gifts serving charitable purposes;

(ii) The acquisition of ownership (an ownership share) of land suitable for the construction of a residential building, subject to certain conditions;

(iii) The granting of gifts to public-benefit organizations for purposes of public service activities;

(iv) The transfer of assets under a statutory obligation for no consideration;

(v) The provision by an employer of employee benefits that are exempt from personal income tax (PIT);

(vi) The receipt of any gift by the donor's spouse, relatives in the direct line (including where the relationship is based on adoption) or their sibling.[532]

c. Deductible Liabilities

As in case of the inheritance tax, in calculating the net worth of property for gift tax purposes, the portion of the debts allocated to the gift and the value of any other encumbrances prorated to the donee concerned is deducted from the market value of the asset acquired (with the exception of private medical practices). The existence of any debts and other charges must be properly documented by the donee.

d. Exempt Persons

The same persons are exempt for gift tax purposes as are exempt for inheritance tax purposes (see XII.A.2.d., above).[533]

3. Tax Rates

The gift tax rates are the same as those that apply as in the case of inheritance tax (see XII.A.3., above).[534]

[528] Act XCIII of 1990, Sec. 5(2).
[529] Act XCIII of 1990, Sec. 12(2).
[530] Act XCIII of 1990, Sec. 11(1).
[531] Act XCIII of 1990, Sec. 69.
[532] Act XCIII of 1990, Sec. 17.
[533] Act XCIII of 1990, Sec. 5.
[534] Act XCIII of 1990, Sec. 12.

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XIII. Transfer Pricing

A. Scope of Provision

Hungary has adopted transfer pricing legislation in accordance with the principles developed by the OECD. The transfer pricing policy of Hungary is based on the arm's-length principle, as defined in Article 9 of the OECD Model Convention.

Under Article 9 of the OECD Model Convention, if conditions are made or imposed between two affiliated companies in their commercial or financial relations that differ from those which would be made between independent enterprises, any profits that would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly. The adjustment of prices among affiliated companies is governed by Act LXXXI of 1996 on corporate income tax and dividend tax (the "CIT Act").

If affiliated companies apply a higher or lower counter value in the agreements concluded with each other than the counter value that would be used between independent parties (the "arm's-length price") under the same conditions, the tax base is adjusted by the difference between the arm's-length price and the applied counter value. A taxpayer must increase its pre-tax profit by the difference if, as a result of the difference, it has lower pre-tax profit than it would have had if it had applied the arm's-length price. If the taxpayer has a higher pre-tax profit than it would have had if it had applied the arm's-length price, it may reduce its tax base to the extent of the difference, if certain conditions described in the CIT Act are fulfilled.

The basis for value added tax (VAT) purposes is also the arm's-length price where affiliated parties apply a different counter value in agreements concluded with each other.

B. Determination of Arm's-Length Price

An arm's-length price is determined using one of the following methods:[535]

(i) Comparative price method: the arm's-length price means the price used by independent parties in connection with the supply of comparable products or services in an economically comparable market;

(ii) Resale price method: the arm's-length price means the price used in connection with the supply of products or services in an unaltered form to an independent party, less the reseller's costs and fair profit;

(iii) Cost and income method: the arm's-length price consists of the original costs of the products or services plus a fair profit;

(iv) Transactional net margin method: this examines a net profit relative to an appropriate base (costs, sales income, assets) that a taxpayer realizes from a transaction;

(v) Transactional profit split method: the combined profits from a transaction are split between associated parties on an economically valid basis that approximates the division of profits that would have been anticipated between independent parties; and

(vi) Any other method: this is used if the arm's-length price cannot be determined using any of the methods referred to above in (i) to (v).

C. Documentation Requirements

Taxpayers (with the exception of small enterprises) must prepare transfer pricing documentation, which must specify the arm's-length price as well as the formula (including the data and the type of events on which the formula is based) used to determine it. The transfer pricing documentation must be prepared based on the contracts and agreements in force between the affiliated parties if performance under these contracts and agreements took place in the tax year.

Affiliated companies need not prepare transfer pricing documentation if the arm's-length price of the performances under the contracts does not exceed HUF 100 million (exclusive of VAT) in the tax year concerned. For purpose of this ceiling, the value of performances under consolidated contracts must be considered in the aggregate. No transfer pricing documentation is required with respect to the recharging to affiliated parties in an unchanged amount or value of the consideration for supplies of goods and services, provided the person supplying the goods or services is not a related party of the taxpayer (i.e., the party bearing the cost concerned).[536] Furthermore, no documentation requirement applies where the arm's-length price is set by law or by a government agency or in case of stock exchange transactions.

In line with the OECD guidelines, Hungarian transfer pricing legislation provides for the following structure of three levels of transfer pricing documentation:

(i) Country-by-country reporting;

(ii) Master file;

(iii) Local file.

1. Country-by-Country Reporting

The country-by-country ("CbC") reporting requirement was introduced in the Hungarian legislation with the amendment of the Act XXXVII of 2013 on certain rules of international administrative cooperation in the field of taxes and other public charges ("Cooperation Act") effective as of May 31, 2017. It applies to international groups of companies that operate in at least two countries and whose consolidated turnover exceeds 750 million euros in the tax year preceding the tax year under review.

Generally, the ultimate parent company is obliged to file a CbC report in its country of residence for tax purposes. In accordance with the above, the Cooperation Act prescribes that the Hungarian tax resident ultimate parent company of a multinational group of companies shall submit a CbC report to the state tax authority with the content specified in the Cooperation Act.[537] However, the ultimate parent company may decide to delegate this obligation to another affiliated company. The

[535] CIT Act, Sec. 18(2).

[536] NE Decree 32/2017 (X.18.), Sec. 1(2), point c).

[537] Cooperation Act, Sec. 43/N(1).

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receiving tax authority then transmits the information to the tax authorities of the member states where the group members are tax residents through an automatic exchange of information (if there is a concerning agreement between the countries). If the ultimate parent company is located outside the European Union and Hungary does not have an automatic exchange of information agreement with that country, either the Hungarian company or any other group member located in the European Union must fulfil the CbC reporting obligation.

A group member that is not required to submit a CbC report must declare to the local tax authority that it is not required to do so and, secondly, who within the group is the reporting entity.

2. Master File

A master file is the study that provides a comprehensive overview of a corporate group's transfer pricing practices, positioning each member company along the supply and value chain. Based on the recommendations of the OECD Transfer Pricing Guidelines, the master file provides a comprehensive picture of the entire group's operations, from the ownership structure and the position of each geographical market, through the functional profile and role of each group member in the value chain, to their contribution to the group's business results, intangible assets activities, financial and tax position. The detailed requirements of the master file are listed in NE Decree 32/2017 (X.18.).

In Hungary, all taxpayers with a local transfer pricing documentation obligation must have a master file. This does not necessarily mean that the master file will be prepared by the Hungarian member company, although in cases where it is not prepared centrally by the parent company or by any other group member by the deadline set by Hungarian law, the obligation will be transferred to the Hungarian company.

3. Local File

The purpose of the local file is to introduce the taxpayer, to provide a detailed analysis of the affiliated party transactions carried out by the taxpayer in the tax year under review, and to determine the arm's length price of these transactions. The mandatory formal elements of the local file are listed in NE Decree 32/2017 (X. 18.). The content of this document is composed of two parts: the descriptive analysis (taxpayer level) and the comparative analysis (transaction level).

The descriptive analysis contains at least the following information:

(i) A description of the structure of the taxpayer's management, an organizational chart, the names of the persons to whom the management reports and the countries in which these persons maintain their head office;

(ii) A detailed description of the taxpayer's business, operations, and strategy, including whether the taxpayer has been involved in or affected by a business reorganization or transfer of intangible property in the current or immediately preceding tax year and the effect of those transactions on the taxpayer;

(iii) A list of the taxpayer's main competitors;

(iv) A copy of any existing unilateral, bilateral or multilateral advance pricing agreements and other tax agreements (including, inter alia, conditional tax assessment rulings), other than those issued by the Minister for Hungarian Taxation Policy or the tax authority, which relate to the taxpayer's controlled transactions subject to registration; and

(v) The date of preparation of the local file.[538]

The comparative analysis contains, among other information, a detailed description of the controlled transaction and the environment, in which the transaction takes place, the data of the other affiliated companies involved in the controlled transaction, the amount of payments made or due in the tax year, copies of the contracts that are basis of the controlled transactions, a detailed comparative and functional analysis of the affiliated companies involved in the controlled transaction, a description of the most appropriate arm's length pricing method and comparison with the transfer price applied.

4. Reporting Deadlines

The transfer pricing documentation must be prepared at the latest by the date on which the company concerned is required to file its CIT returns. If the business year of a company coincides with the calendar year, this deadline is May 31.

In general the deadline for the master file is the same as the deadline for the local file, in some cases however the deadline for the master file may be different. In the case where the master file is prepared centrally by the group and made available to the other member companies (and the local document has been completed by the prescribed deadline), the master file should in principle be completed by the deadline prescribed by the legislation of the country of the ultimate parent company. The master file must however be available at the latest within 12 months of the last day of the company's tax year.

The CbC reporting must be submitted by the parent company (or designated company) within 12 months of the last day of the financial year. The reporting obligation must be fulfilled by the Hungarian group member by the last day of the financial year. Changes to the reported data must be reported within 30 days of the change.

5. Compliance Penalties

A taxpayer that fails to comply with the obligation to keep records relating to the determination of the arm's-length prices will be subject to a penalty of up to HUF 5 million for each failure to register and, in case of repeated breach, of up to HUF 10 million for each failure to register. If the subject of the repeated breach is the same register, the amount of the penalty can be up to four times the penalty imposed for the first breach.

The maximum penalty for non-compliance with the CbC reporting and announcement obligations is HUF 20 million.[539]

6. Public Country-by-Country Reporting

Based on Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax infor-

[538] NE Decree 32/2017 (X.18.), Sec. 4(3).
[539] Act XXXVII of 2013, Sec. 43/S.

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mation by certain undertakings and branches, a new Chapter has been implemented in the Accounting Act C of 2000 (the "Accounting Act") as of January 1, 2023, setting out the requirements for the corporate tax information report.

Pursuant to the Accounting Act, the ultimate parent company shall, if, in two consecutive financial years, its consolidated annual accounts revenue at the balance sheet date exceeds HUF 275 billion, prepare, publish and make available a report containing corporate tax information for the later of those two consecutive financial years and for the subsequent financial years.[540] Ultimate parent companies are exempted from this above obligation if their consolidated annual accounts revenue at the balance sheet date for the last two consecutive financial years did not exceed HUF 275 billion.

A standalone undertaking under the Accounting Act (which is not considered a consolidated enterprise) is also subject to the above obligation if its annual account revenue exceeds HUF 275 billion on the balance sheet date for two consecutive financial years. To qualify for the exemption, the standalone undertaking must have had a revenue under the annual accounts not exceeding HUF 275 billion at the balance sheet date for the last two consecutive financial years.

Ultimate parent companies (their consolidated affiliates) and standalone undertakings do not have to prepare a corporate tax information report if such companies, including their branches, are established exclusively in Hungary and not in another tax jurisdiction, or have a permanent place of business or a permanent business activity exclusively in Hungary. The preparation of a corporate tax information report is not required furthermore if such companies or their consolidated affiliates publish a report in accordance with Article 89 of Directive 2013/36/EU of the European Parliament and of the Council, which report includes such information for all their activities and, in the case of ultimate parent companies, for all the activities of all consolidated affiliates.[541]

An undertaking required to prepare annual accounts under the Accounting Act which is a subsidiary of an ultimate parent company not governed by the law of an EU Member State, if the consolidated revenue of the ultimate parent company, as shown in its consolidated financial statements, exceeds 750 million euros at the balance sheet date for two consecutive financial years, must publish and make available a corporate tax information report of the ultimate parent company for the later of those two consecutive financial years and for subsequent financial years.[542] A subsidiary is exempted from this obligation if the consolidated income of the ultimate parent company according to its consolidated financial statements has not exceeded the above threshold for the last two consecutive financial years.

The Accounting Act contains also detailed regulations on the reporting obligation of branches of ultimate parent companies and standalone undertakings not governed by the law of a Member State of the European Union.

The corporate tax information report must present information on all the activities of the ultimate parent company or of the standalone undertaking in the financial year concerned, including, in the case of an ultimate parent company, all its consolidated affiliates.[543]

The report should cover the following information on the companies concerned, in accordance with the detailed conditions laid down in the Accounting Act:

(i) The main data of the ultimate parent company or the standalone undertaking;

(ii) A brief description of its activities;

(iii) The number of employees;

(iv) Revenues;

(v) The amount of profit or loss before tax;

(vi) The amount of corporate tax payable in the current year;

(vii) The amount of corporate tax paid on a cash basis;

(viii) The amount of accumulated profits after tax.

The corporate tax information report will first be required for financial years starting on or after June 22, 2024.

The report must be filed and published by the ultimate parent company at the same time as the consolidated accounts and by the standalone undertaking at the same time as the annual accounts, and it must also be published on their website.

D. Advance Pricing Agreements

At the request of the taxpayers, the Minister for Hungarian Taxation Policy will prepare a resolution (an advance pricing agreement or APA) on the procedure for determining the arm's-length price to be used in a future transaction between affiliated companies, which will also include the facts and circumstances that serve as the basis for the calculation, and, if definable, the arm's length price or price range. The details of this procedure are set out in Act CL of 2017 on the Rules of Taxation.

In the case of bilateral and multilateral proceedings, the APA will be considered valid on the reaching of an agreement between the Minister for Hungarian Taxation Policy and the competent foreign authorities. Before lodging an application, the applicant may request prior consultation to allow the applicant and the competent authorities to discuss in advance the conditions under which to conduct the proceedings, to make arrangements for the timetable and disposition of discussions, and to identify any possibilities for cooperation. The outcome of the prior negotiations is not binding on either the applicant or the authorities in the proceedings for determining an arm's-length price.

An APA is valid for a fixed term of at least three but not more than five tax years. The agreement can be extended once for an additional three taxyear period, unless the facts on which the original resolution was based have changed to such an extent that a new agreement would be required to determine the arm's-length price.[544]

[540] Accounting Act, Sec. 134/E(1).
[541] Accounting Act, Sec. 134/E(5)–(6).
[542] Accounting Act, Sec. 134/E(7).
[543] Accounting Act, Sec. 134/F(1).
[544] Act CL of 2017 on the Rules of Taxation, Sec. 182.

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The fee for the APA procedure is HUF 8 million for unilateral proceedings and HUF 12 million for bilateral and multilateral proceedings. In case of proceedings for an extension or modification of an APA, the fee is one-half of the fee paid in the original proceedings. The fee for a prior consultation is HUF 500,000 for each consultation.[545]

[545] Act CL of 2017 on the Rules of Taxation, Sec. 175.

E. Competent Authority

There are no specific rules that apply to the competent authority, which is the Hungarian tax authority, the National Tax and Customs Administration (see IV.A.2., above). If the issue at hand involves the mutual agreement procedure (see XV.B.1.b., below), then the competent authority is the Ministry of Finance.

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XIV. Special Provisions Relating to Multinational Operations

A. Foreign Family Foundations

There are no special rules regarding foreign family foundations.

B. Tax Haven Operations

See XIV.C., below.

C. Controlled Foreign Companies

Hungary has introduced various rules to regulate controlled foreign companies with a view to preventing tax evasion.

A controlled foreign company ("CFC") is defined in the Act LXXXI of 1996 on Corporate Income Tax and Dividend tax (the "CIT Act") in line with Council Directive (EU) 2016/1164 of July 12, 2016, as follows:

(i) A foreign entity, including a permanent establishment, in which a Hungarian company (alone or with related parties) controls, directly or indirectly, more than 50% of the voting rights or subscribed capital, or is otherwise entitled to more than 50% of its after-tax profits; and

(ii) The foreign entity paid less than 50% of the corporate income tax it would have had to pay in the financial year on its taxable income as determined under the Hungarian CIT rules.

In general, a foreign entity is not deemed a CFC if its income is shown to be derived from genuine arrangements (i.e., real economic substance), as supported by adequate personnel, assets, and risks attributable to its location and business activities. In this regard, the burden of proof to avoid CFC qualification lies with the Hungarian taxpayer.[546]

A foreign entity can also avoid CFC qualification if one of the following conditions is met in the year at issue:

(i) The pre-tax profit of the foreign entity is less than HUF 243,952,500 and its non-trading income is than HUF 24,395,250, or

(ii) The pre-tax profit of the foreign entity is no more than 10% of its operating costs.

In either case, the accounting profits of the foreign entity are determined according to the laws of the jurisdiction of its tax residence.

Finally, an eligible foreign entity will also not be treated as a CFC if it is established in a state, other than a Member State of the European Union or the European Economic Area, with which Hungary has an agreement granting an exemption from Hungarian corporate taxation.

Under the CFC rules in the CIT Act, the following items of income are taxed under the general rules applicable to Hungarian companies:

(i) The qualifying undistributed after-tax profits of a CFC that is directly owned (which otherwise enjoys preferential tax treatment);

(ii) Dividends received (that would otherwise be exempt) from a CFC (unless already taxed as qualifying profits under (i), above);[547]

(iii) Capital gains from a CFC that would otherwise be exempt under the Hungarian participation exemption if certain requirements are met, because the participation exemption rules do not apply to a CFC;

(iv) Gains realized on liquidations and on the redemption of capital in a CFC (unless already taxed as qualifying profits under (i), above);[548] and

(v) Consideration paid to a CFC, unless the company demonstrates that this was necessary for its business activities.[549]

With respect to point (v), above, special documentation requirements apply for transactions concluded between Hungarian companies and their CFCs. Under these rules, the Hungarian taxpayer must prepare the documentation to support the business substance of transactions with its CFCs.[550] Failure to comply with these reporting requirements is subject to default penalties.

In computing the CIT liability of a Hungarian company, only expenses incurred for purposes of its business activity can decrease its CIT base. The general rule is that the burden of proof lies with the tax authorities if they wish to challenge the deduction of a particular expense, but where the expense is derived from a transaction with a CFC, the burden shifts to the taxpayer.

Special documentation requirements apply to Hungarian companies with respect to supporting deductions for transactions that are executed with their CFCs. The reporting must include: (i) data identifying the parties involved, (ii) the subject matter of the underlying contract, and (iii) the reasons justifying the tax deductibility of the related expenditure.

Any after-tax profits registered on the last day of the tax year of the CFC that are derived from non-genuine arrangements, less any dividends paid out, are to be added to the taxpayer's base to the extent the income was generated by assets and risks linked to significant people functions carried out by the taxpayer.[551]

Value adjustments and capital losses in connection with the shares of a CFC, including from derecognition, that are itemized as expenses for the tax year are not recognized for CIT purposes, to the extent the amount exceeds the sum which qualifies as an increase to the pre-tax profit.[552]

Dividends received by a Hungarian company from its CFC are tax-exempt if the profits out of which they were paid were included in its taxable income. Furthermore, the tax base of a

[546] CIT Act, Sec. 4, point 11.

[547] CIT Act, Sec. 7(1), point g).
[548] CIT Act, Sec. 7(1), point gy).
[549] CIT Act, Schedule No. 3 Sec. A, point 9).
[550] CIT Act, Schedule No. 3, point 9.
[551] CIT Act, Sec. 8(1), point f).
[552] CIT Act, Sec. 8(1), point ma).

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Hungarian company cannot be reduced based on transfer pricing principles, if the related party is a CFC.[553]

Comment: Given the relatively broad definition of a CFC under Hungarian law, Hungarian companies should pay special attention to the potential CFC status of all foreign business partners and consider requesting declarations on their ownership structure and sources of income before entering into any business relationship.

D. Global Minimum Tax

1. In General

After Hungary committed itself to the OECD's Pillar Two initiative on Tax Challenges Arising from the Digitalisation of the Economy — Global Anti-Base Erosion Model (GloBE) Rules, which was adopted by the OECD in 2021, on December 14, 2022, the European Union (EU) passed Council Directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise (MNE) groups and large-scale domestic groups in the EU. Member States of the EU were required to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by December 31, 2023.

Comment: Besides Poland, Hungary fought fiercely against the adoption of the EU Directive, but the Hungarian Government relinquished its veto after receiving written confirmation from the General Secretariat of the EU Council that the main characteristics of the local business tax in Hungary meet the conditions set out in the Directive to be able to take it into account in determining the effective tax rate. Since the local business tax is revenue based (rather than profit based), the effective tax burden of companies operating in Hungary — despite the 9% CIT rate — can reach the minimum tax rate of 15%, and thus it is highly likely they will not have to pay the global minimum tax.

Council Directive (EU) 2022/2523 of December 14, 2022 applies to entities located in the EU that are members of MNE groups or large-scale domestic groups that meet the annual threshold of at least 750 million euros of consolidated revenue. These entities are to be subject to a minimum effective rate of 15%.

Pursuant to the EU Directive, the Hungarian Act transposing the global minimum tax in Hungary, Act LXXX of 2023 (the "GMT Act"), is largely based on the OECD Pillar Two Model Rules as approved by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS). This means that Hungary has introduced the following Pillar Two components:

(i) Country-by-country reporting based safe harbor legislation;

(ii) Substance-based income exclusion for all top-up taxes; and

(iii) A minimum tax rate of 15%.

[553] CIT Act, Sec. 18(1), point ab).

2. Basic Rules

In line with Council Directive (EU) 2022/2523, the scope of the GMT Act covers members of multinational enterprise groups and large-scale domestic groups that have exceeded the revenue threshold of 750 million euros or more in at least two of the last four consolidated financial statements of the group's ultimate parent entity.[554] The FX rate published by the European Central Bank for December of the preceding year is to be used to convert the euro amounts into the currency the group member uses when preparing its financial statements.[555]

Excluded entities are defined in line with the Council Directive (EU) 2022/2523. These entities are:

(i) Publicly owned entities, international organizations, non-profit organizations, pension funds, investment funds that are ultimate parent entities or real estate investment vehicles that are ultimate parent entities,

(ii) Entities where at least 95% of the value of the entity is owned by one or more entities referred to in point (i), directly or through one or several excluded entities, except pension services entities, and that operate exclusively, or almost exclusively, to hold assets or invest funds for the benefit of the entity or entities referred to in point (i), or exclusively carry out activities ancillary to those performed by the entity or entities referred to in point (i),

(iii) Entities where at least 85 % of the value of the entity is owned, directly or through one or several excluded entities, by one or more entities referred to in point (i), except pension services entities, provided that substantially all of their income is derived from dividends or equity gains or losses that are excluded from the computation of the qualifying income or loss.[556]

As referenced above, the GMT Act includes the full set of the Pillar Two charging provisions and introduces a Qualified Domestic Minimum Top-Up Tax (QDMTT). While the charging mechanism for the Income Inclusion Rule (IIR) and the QDMTT have already become effective as of January 1, 2024, the charging mechanism for the Undertaxed Profits Rule (UTPR) will only be introduced as of January 1, 2025.

The GMT Act defines the covered taxes so that the covered taxes of a constituent entity includes the followings:

(i) Taxes recorded in the financial accounts of a constituent entity with respect to its income or profits, or its share of the income or profits of another constituent entity in which it owns an ownership interest;

(ii) Taxes imposed on distributed profits, deemed profit distributions, and non-business expenses imposed under an eligible distribution tax system;

(iii) Taxes imposed in lieu of a generally applicable corporate income tax; and

[554] GMT Act, Sec. 1(2).
[555] GMT Act, Sec. 2(4).
[556] GMT Act, Sec. 3, point 52.

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(iv) Taxes levied by reference to retained earnings and corporate equity, including taxes on multiple components based on income and equity.[557]

The GMT Act also includes a non-exhaustive list as to what taxes in Hungary qualify as covered taxes: corporate tax, local business tax, the income tax of energy suppliers, and the innovation contribution. Given that this is not intended to be an exhaustive list, other taxes may also be treated as such.

Hungary will also apply a substance-based income exclusion, which is a carve-out for expenditures on tangible fixed assets and payroll costs. The amount of the exclusion reduces excess profits, which are then used to calculate the initial top-up tax. The amount of exclusion in 2024 is 8% of the carrying value of tangible assets of Hungarian constituent entities and 10% of eligible payroll expenses. Both rates will be reduced to 5% by 2033.[558]

Hungary bases its QDMTT on the accounting standards companies use for local statutory reporting purposes, which could be either the Hungarian GAAP or IFRS. If the business year of a local entity differs from that of the multinational enterprise group, the accounting standards applied by the ultimate parent entity when preparing its consolidated financial statements will have to be applied.

The design of the QDMTT tax follows the administrative guidelines issued by the OECD, including the provisions on the allocation of covered taxes between constituent entities.

3. Transitional Safe Harbor Rules

The purpose of introducing QDMTT is to allow for taxpayers to make use of the QDMTT Safe Harbor.[559] In order to qualify for these safe harbor rules, the provisions of the OECD Model Rules (including the Model Rules, the Commentary, the Safe Harbors and the Administrative Guidance) and the separate ministerial decree (which is currently under preparation) are to be fulfilled.

In addition to the QDMTT Safe Harbor, Hungary introduced a transitional Country by Country Reporting (CbCR) Safe Harbor. This is a temporary measure that allows a multinational enterprise to avoid undertaking detailed GloBE rule calculations if it can demonstrate, based on its CbCR, that it meets one of the following tests for a jurisdiction: (i) the total revenue is less than 10 million euros, and the pre-tax profit for the tax year is less than 1 million euros; (ii) an effective tax rate that equals or exceeds 15% in 2023 and 2024, 16% in 2025 and 17% in 2026; or (iii) the pre-tax profit for the tax year is not greater than the sum of the substance-based income exclusion computed for constituent entities subject to the obligation to report on corporate income tax information.[560]

If one of these tests is met, the top-up tax in a jurisdiction for a fiscal year will be deemed to be zero.

The application of these safe harbor rules is subject to election and can reduce the tax burden of the taxpayers as well as their administrative duties. The detailed rules on this exemption will also be set out in a ministerial decree, which is not yet available, either.

It is important to note that the exemption is only available for a transitional period, covering fiscal years starting on or before December 31, 2026. Therefore, the exemption is practically available for the first three years of the new global minimum tax regime.

4. Compliance

The additional tax must be declared on the so-called GloBE information return form in Hungarian or in English, which must be filed by March 31, 2026, for tax year 2024 and, as from tax year 2025, by the end of the fifteenth month following the tax year. The top-up taxes can be paid in either HUF, euros or US dollars.[561]

5. Qualified Refundable Tax Credits

It is to be noted that the new R&D tax credit (see II.A.2.b.(2), above) was introduced because it is a qualified refundable tax credit and, therefore, will not reduce the effective tax rate for GloBE purposes, as opposed to the previously available R&D tax allowance.

In contrast to the previously existing R&D tax base allowance, the new R&D tax credit comes with certain limitations. Recognized costs are narrower in range, as the direct costs related to certain contracted R&D services will not be treated as eligible costs.

The other related tax credits currently available in Hungary, such as the investment tax credit, do not qualify as refundable tax credits per the GloBE rules, and thus, significantly reduce the effective tax rate of the constituent entities.

Comment: The introduction of the global minimum tax could affect Hungary's appeal as an investment destination for multinational companies looking to benefit from lower tax rates. However, it also helps level the playing field and reduce aggressive tax planning by global corporations.

[557] GMT Act, Sec. 20(1).
[558] GMT Act, Schedule 9.
[559] GMT Act, Sec. 11(2).
[560] GMT Act, Sec. 32(2).
[561] GMT Act, Sec. 2(5).

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XV. Avoidance of Double Taxation

A. Foreign Tax Credits

1. Corporate Income Tax

A Hungarian resident company is liable to corporate income tax (CIT) on its worldwide income (unlimited tax liability).[562] If such a taxpayer derives income from another country, the income may also be subject to CIT or an equivalent tax in that country. There are two methods of avoiding the resulting double taxation: (i) the exemption method; and (ii) the tax credit method.

In the absence of an applicable tax treaty, Hungary allows a foreign tax credit. This tax credit method is based on the principle that a taxpayer remains liable to Hungarian domestic taxation on its total worldwide income but should be able to avoid double taxation by crediting any foreign tax paid or payable against its CIT payable in Hungary.

The creditable amount is determined separately for each type of income and for each country from which it derives. Thus, where a tax treaty applies, the foreign tax credited in connection with any one particular type of income may not exceed the amount of foreign tax paid (payable) or the amount of foreign tax that can be enforced under the provisions of a tax treaty, whichever is less. In the absence of an applicable treaty, the foreign tax credited may not exceed 90% of the amount of foreign tax paid (payable). In no case may the credit exceed the amount of Hungarian tax calculated using the mean tax rate[563] relating to the income concerned.[564]

The amount of foreign-source income is determined in accordance with the Hungarian CIT rules, taking into account the costs and expenses directly attributable to the acquisition of the income, and other adjustments to the pre-tax profit. Costs that are not directly attributable to earning the foreign income and that are not related exclusively to domestic profit-making operations, as well as items increasing and reducing the pre-tax profit, must be allocated in the proportion to the ratio of foreign sales and other income to total worldwide income.[565]

2. Personal Income Tax

In the absence of a tax treaty, an individual may likewise be subject to liability to pay personal income tax (PIT) in both Hungary and another country on the same income. Hungarian rules, however, offer to remedy the resulting double taxation.

Under Subsection (1) of Section 32 of Act No. CXVII of 1995 on Personal Income Tax (the "PIT Act"), with respect to any income on which the individual has paid foreign PIT (or similar taxes), the tax payable in Hungary is reduced by 90% of the foreign tax paid on the income. However, in no event may the tax so credited exceed the tax on the income calculated at the relevant Hungarian tax rate.

As regards foreign income from capital investments, tax paid in a foreign country on such income will also be credited against the Hungarian tax due on the income. In the absence of an applicable tax treaty, the foreign tax paid may not reduce the tax payable in Hungary to less than 5% of the tax base. Any foreign tax refunded under the domestic law of the foreign country concerned or an applicable treaty may not be claimed as part of the foreign tax credit.[566]

Any interest and dividends paid by a legal person or other organization established in a low tax-rate jurisdiction (i.e., a jurisdiction whose tax laws do not impose any tax liability in the nature of CIT or whose PIT rate is less than 9% ("low tax rate country"), unless Hungary has a tax treaty with that jurisdiction), and any fraction of the proceeds received in connection with the conveyance of securities issued by a legal entity having its registered seat in a low tax rate country that is in excess of the amount spent on the acquisition of such securities qualifies as "other income."

"Other income" also includes:[567]

(i) Any interest paid by a resident of a country with which Hungary does not have a tax treaty covering income and wealth tax;

(ii) Proceeds received by an individual who: holds an interest in a legal entity registered in a low tax rate country on its dissolution; or disinvests from a legal entity's subscribed capital (which entity is registered in a low tax rate country), that exceed the costs incurred to acquire those interests, i.e., stocks, shares, or other similar securities or rights (this will not apply, however, to income from securities issued by persons resident in an OECD Member State or to interest paid by persons resident in an OECD Member State); and

(iii) Proceeds received by an individual on the termination of his or her interest in a CFC, by ways other than the conveyance of his/her interest, that are in excess of the costs incurred to acquire the interest (i.e., stocks, shares, or other similar securities or rights).

Other income does not qualify as income from capital investments but is included in the consolidated tax base.

B. Tax Treaties

1. Treaty Interpretation/Application

a. Creation of an Income Tax Treaty Relationship

Hungary concludes its double tax treaties based on the OECD Model Tax Convention on Income and on Capital. Hungary is also a party to the Vienna Convention on the Law of Treaties (1969)[568] , which regulates the process of negotiating and signing of international treaties.

Generally, high ranking officials or experts of the Ministry of Finance spearhead negotiations for tax treaties on behalf of Hungary. The negotiation process follows the Vienna Convention on the Law of Treaties. Once the wording of a certain treaty is finalized by the negotiating parties, they initial the text.

[562] CIT Act, Sec. 3(1).

[563] "Mean tax rate" means CIT minus tax allowances, divided by the tax base, with the result being rounded off to two decimal places.

[564] CIT Act, Sec. 28(5).

[565] CIT Act, Sec. 28(4).

[566] PIT Act, Sec. 8(2).

[567] PIT Act, Sec. 28(12)–(13).

[568] https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

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This is then followed by the formal signing ceremony — in Hungary, the President, the Prime Minister, and the Minister of Foreign Affairs are typically the official representatives on such occasions.

Once signed, treaties require ratification: first, the President needs to acknowledge the binding effect of the treaty, then the treaty needs to be promulgated in the Hungarian Gazette, either as an act of Parliament or as a government decree (in case of tax treaties, it is usually an act of Parliament).[569]

The Constitutional Court has the right to assess the harmony between international treaties and Hungarian Law — it can be done both prior to the ratification of the treaty in question or afterwards. Should the Constitutional Court rule that a Hungarian law is contradictory to an international treaty, it may either nullify said Hungarian law or oblige the government or Parliament to make the necessary measures to resolve the conflict.

b. Administrative Measures Dealing with Tax Treaty Provisions

Article 25 of the OECD Model Tax Convention provides an opportunity for taxpayers to initiate a procedure known as the Mutual Agreement Procedure (MAP) to make a formal application to their country of residence or the other country requesting that the competent authorities of both countries initiate discussions between them to resolve conflicts where higher taxes or double taxation may have been imposed. The MAP is an international dispute resolution mechanism whereby the Competent Authorities of Contracting States may communicate directly with each other for the purpose of reaching agreement in individual cases on taxation in Hungary and in other states. The MAP can be initiated in order to settle difficulties or doubts that may emerge in the course of the interpretation or application of tax treaties. Applicable rules on the dispute resolution procedure under tax conventions in the domestic law are contained in Chapter IV/A of Act XXXVII of 2013 on Certain Rules of International Administrative Co-operation in relation to Taxes and Other Public Charges (the "IAC Act").

In addition to Article 25, taxpayers can initiate MAP under the rules of the Arbitration Convention which deals specifically with transfer pricing cases (see 2. below), or under the EU Tax Dispute Resolution Mechanism Directive of October 10, 2017, for disputes involving other EU Member States (see 3. below).

c. Dispute Resolution Pursuant to Tax Treaties

Applications for any Mutual Agreement Procedure (MAP) may be submitted to the Department of Tax Policy and International Taxation of the Ministry of Finance (1051 Budapest, József nádor tér 2–4.) acting as Competent Authority. The application for a MAP is free.

The complaint must include the following:

(i) The name, address, tax identification number, and any other information necessary to identify the taxpayer and any other person(s) interested in the case;

(ii) The tax assessment periods concerned;

(iii) A detailed description of the relevant facts and circumstances of the case;

(iv) Reference to the applicable national rules; and

(v) Reference to the applicable tax treaty

(vi) The following information (to be provided by the taxpayer): (a) why the taxpayer believes there is a dispute; (b) details of any legal remedies and legal proceedings instituted by the taxpayer in respect of the transactions concerned and any court decisions on the dispute, regardless of the State in which the proceedings were conducted; (c) where applicable, a copy of the final decision giving rise to the dispute; and (d) information on a complaint lodged by the taxpayer in the context of another Mutual Agreement Procedure or other dispute resolution procedure in relation to the dispute;

(vii) Any additional information requested by the Hungarian Competent Authority; and

(ix) Information on the person responsible for keeping records in connection with the determination of the arm's length price.[570]

The complaint must indicate the other treaty country concerned. The complaint and its annexes must also be submitted in English at the request of the Hungarian Competent Authority.

The procedure consists of the following two stages: (i) examination of the complaint; and (ii) the MAP.

The Competent Authority will, within two months, acknowledge receipt of the complaint and send information on the submission of the complaint to the relevant Foreign Competent Authority. The Hungarian Competent Authority will, within six months of receipt of the complaint decide whether to accept or reject the complaint.[571]

No appeal may be lodged against the decision of the Hungarian Competent Authority rejecting the complaint. The taxpayer may apply to the Metropolitan Court against the order of the Hungarian Competent Authority rejecting the complaint. If the complaint is accepted, the Competent Authority may unilaterally eliminate the double taxation.

The Hungarian Competent Authority may, within the six-month time limit officially decide on the acceptance of the complaint and may choose to settle the dispute unilaterally without the involvement of the competent authorities of the other treaty country. A decision to settle a dispute unilaterally will become final if, in an express written declaration, the taxpayer accepts it within 30 days of the notification, and, where applicable, in the administrative lawsuit concerning the disputed issue, the taxpayer substantiates that its action has been withdrawn.[572]

If the Hungarian Competent Authority and the Competent Authority of the other treaty country accept the complaint, the dispute may be settled by Mutual Agreement Procedure between both of them. If both competent authorities have reached an agreement on the resolution of the dispute, the Hungarian Competent Authority will notify the taxpayer by a decision. The decision taken based on the mutual agreement will become

[569] Act L of 2005, Sec. 9(1).

[570] IAC Act, Sec. 42/C(1).
[571] IAC Act, Sec. 42/E(1).
[572] IAC Act, Sec. 42/G.

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final and binding on the Hungarian Competent Authority and the tax authority if the person concerned, within the time limit agreed on between the competent authorities of the states concerned: (i) adopts the decision reached by mutual agreement; and (ii) waives all other remedies in connection with the resolution of the dispute. Based on the final decision taken by the mutual agreement, the tax authority will immediately amend the original personal tax liability of the taxpayer by a decision that will, notwithstanding the limitation period, become enforceable.[573]

The taxpayer will not be required to pay a late payment surcharge and a tax penalty for the tax liability that was imposed as a result of the amended tax liability, nor will the taxpayer be entitled to interest on the tax to be refunded to them. If the tax authority does not decide to amend the original tax liability of the taxpayer, the taxpayer may apply to the Metropolitan Court for a court order to oblige the tax authority to make the relevant decision.

Hungary's tax treaties do not establish a deadline for conducting a MAP or an express obligation for the treaty partners to come to an agreement; the competent authorities are under a duty merely to use their best endeavors to settle the dispute, not to achieve a result. Although according to the OECD Model Convention, if an agreement is not reached within two years, the taxpayer may ask for the matter be referred to arbitration, Hungary's treaties do not include such a provision.[574]

An agreement reached as a result of a MAP is to be implemented in accordance with Article 25(2) of the OECD Model Convention. If an agreement is reached, the tax authority will immediately adjust the original tax liability of the affected person by means of a decision that is enforceable notwithstanding the statute of limitations. If the tax authority fails to adjust the tax liability, the taxpayer is entitled to apply to a court to force the decision.[575]

d. MAP Initiated in Connection with Adjustments Based on the Multilateral Arbitration Convention

A MAP may also be initiated or conducted based on the Multilateral Convention signed in Brussels on July 23, 1990, on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (the "Arbitration Convention") promulgated in Hungary by Act XXXVI of 2006.

The Arbitration Convention allows taxpayers to request their Competent Authority to initiate a coordination between the Contracting States MAP where double taxation was incurred or is likely to incur in relation to transfer pricing, in order to eliminate the double taxation.

The competent authority in this type of procedure is also the Ministry of Finance. The difference between the mutual agreements based on the Arbitration Convention and those based on tax treaties is that, under the Arbitration Convention, where competent authorities cannot reach an agreement within two years, the case will be taken to the Advisory Commission. The Advisory Commission will make its decision in six months, which is binding on Member States.

A taxpayer that has its seat or a permanent establishment in Hungary may present its case to the Competent Authority if it is supposed that the arm's length price principle was not observed. The taxpayer has the right to initiate Mutual Agreement Procedure regardless of other available legal remedies (except for an administrative proceeding or lawsuit)—. The associated enterprise affected by (economic) double taxation must have a seat or PE in another Contracting State of the Arbitration Convention.

To request a MAP is free of charge and the application must be filed electronically. The MAP application must contain the following information:

(i) Identification data with respect to the applicant and other persons concerned with the application (names, seats, tax identification numbers);

(ii) The main facts of the case;

(iii) Information on administrative or civil proceedings initiated (in Hungary or abroad) by the applicant or other persons concerned regarding the tax matter; and

(iv) Reason for submitting the application (why and how the taxpayer believes the arm's length price principle was violated).

It is also advised that the applicable transfer pricing documentation be submitted together with the MAP application, or in lieu of such documentation, a similar analysis.

The Hungarian Competent Authority examines the application on the merits. The authority sends confirmation notification on the submission of application to the taxpayer and informs the foreign Competent Authority concerned about the submission of the application.

Based on the content of the application, the available data (in particular, tax returns, statements of previous audits) and, if necessary, an audit aiming at collecting the necessary data, the authority primarily unilaterally endeavors to eliminate double taxation. If the objection is justified and the request cannot be satisfied unilaterally, namely the double taxation case cannot be resolved in another way, the authority initiates a MAP with the Competent Authority of the other Contracting State to avoid or eliminate taxation which is not in accordance with the treaty.

If the competent authorities cannot reach an agreement within two years, then the case has to be referred to arbitration. The Advisory Commission will make its decision within six months from the date of submission of the issue to the Commission, and this will be binding on all parties. However, Competent Authorities — by common agreement — can take such decision which is different from the opinion of the Advisory Commission.

The case cannot be referred to arbitration if the taxpayer already brought the given case to court in Hungary and this had not been withdrawn before the decision was made. Moreover, the case cannot be taken to arbitration if the foreign associated enterprise brought the given case to court and the relevant domestic law does not allow the foreign Competent Authority to derogate from the court decision, unless the court action had been withdrawn before the decision was made.

Prior to the arbitration stage, a MAP may be conducted in addition to the court proceedings. Once the court makes a final

[573] IAC Act, Sec. 42/H.

[574] https://www.oecd.org/tax/dispute/Hungary-Dispute-Resolution-Profile.pdf.

[575] Act CL of 2017, Sec. 205.

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decision on the merits of the case, the Hungarian Competent Authority may not depart from that decision.

If the competent authorities reach an agreement in the MAP, its implementation will be subject to the cancellation of legal proceedings. The agreement or resolution concluded as a result of an international MAP will be implemented also with respect to the tax periods which, at the time of concluding the agreement or resolution, have already lapsed.[576]

e. EU Dispute Resolution Procedure for the Elimination of Double Taxation

A third means of initiating a MAP is the dispute resolution procedure of the European Union for the resolution of an international tax dispute between EU Member States concerning income or assets acquired in a tax year beginning on or after January 1, 2018.[577]

Chapter III/A titled "EU dispute resolution procedure" of the IAC Act allows taxpayers — if they opt for this procedure — to apply for the initiation of a MAP between competent authorities of the Member States to tackle issues of double taxation. If MAP is unsuccessful, the taxpayer may request the establishment of an advisory committee consisting of representatives, independent experts of Hungary and other Member States concerned, whose decision is binding on the competent authorities, unless otherwise agreed by the competent authorities.

The procedure may be initiated, if:

(i) The foreign state concerned is another Member State of the European Union; and

(ii) The case involves a dispute concerning income or assets acquired in a tax year beginning on or after January 1, 2018.

The EU MAP mechanism is an international dispute resolution mechanism whereby the competent authorities of Member States concerned may communicate directly with each other for the purpose of reaching agreement in settling individual cases of double taxation in Hungary and/or in other EU Member States. The person concerned may, if requested, appear or be represented at a meeting of the Advisory Committee with the agreement of the competent authorities of the Member States concerned, and will do so at the request of the Advisory Committee. The Competent Authority in this type of dispute resolution is also the Ministry of Finance.

The complaint can be submitted by a taxpayer who is a resident of an EU Member State for tax purposes and whose taxation is directly affected by a question in dispute. The complaint will be submitted to the Competent Authority of each Member State concerned. However, a natural person resident for tax purposes in Hungary or a small and medium-sized enterprise concerned is allowed to submit their complaint to the Hungarian Competent Authority only, which will then forward the complaint to the other Member States concerned.

Based on the application, double taxation can basically be settled bilaterally even if several states are involved. The application can also be submitted if double taxation occurred through a bona fide foreign self-audit. An application may cover several tax years.

The application for the MAP under this regime is also free.

The application must contain the following:

(i) The name, address, tax identification number and other information necessary to identify the person lodging the complaint and any other person interested in the case;

(ii) The tax assessment periods concerned;

(iii) A detailed description of the relevant facts and circumstances of the case;

(iv) Reference to the applicable national rules; and

(v) Reference to the applicable international agreement or tax treaty.

In addition, the person concerned filing the complaint must provide the following information: (i) an explanation of why the person concerned considers that there is a dispute; (ii) details of any legal remedies and legal proceedings instituted by the person concerned in respect of the transactions concerned and any court decisions on the dispute, regardless of the State in which the proceedings were conducted; (iii) an undertaking of the person concerned that he/she will respond as completely and quickly as possible to all reasonable and appropriate requests made by the competent authorities of the Member States and allow access to all the necessary documentation for the competent authorities concerned; (iv) where applicable, a copy of the final decision giving rise to the dispute, in the form of a final decision of the tax authority, tax audit report, report or other equivalent document, and a copy of any other document issued by the tax authorities in relation to the dispute, regardless of the Member State in which these documents were issued; (v) information on a complaint lodged by the person concerned in the context of another MAP or other dispute resolution procedure in relation to the dispute; and (vi) a statement by the person concerned that he/she acknowledges the legal consequence of the submission of his/her complaint in that the submission of the complaint will terminate any other mutual agreement procedures concerning Hungary in relation to the dispute in question; and (vii) any additional information requested by the Hungarian Competent Authority in the course of rectification of deficiencies which the Hungarian Competent Authority deems necessary for the substantive assessment of the complaint.

The procedure consists of the following three stages: (i) examination of the complaint; the MAP; and (iii) resolution of the dispute by the Advisory Committee.

(For a comprehensive flowchart see Worksheet 5.)

The Competent Authority will, within two months, acknowledge receipt of the complaint to the taxpayer and send information on the submission of the complaint to the relevant Foreign Competent Authority. The Hungarian Competent Authority will, within six months of receipt of the complaint, decide whether to accept or reject the complaint.

No appeal may be lodged against the decision of the Hungarian Competent Authority rejecting the complaint. If the complaint has been rejected by all the competent authorities of the Member States concerned, the person concerned may ap-

[576] IAC Act, Sec. 42.

[577] https://nav.gov.hu/print/ado/egyeb/drd-map_tajekoztato.

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peal to the Metropolitan Court against the order of the Hungarian Competent Authority rejecting the complaint.

The Competent Authority will decide on the acceptance or rejection of the complaint based on the content of the complaint and a compliance audit/inspection carried out by the tax authority at the request of the Competent Authority. If the complaint is accepted, the Competent Authority may unilaterally eliminate the double taxation.

The Hungarian Competent Authority may, within the time limit set for the decision, officially decide on the acceptance of the complaint and may choose to settle the dispute unilaterally without the involvement of the competent authorities of the other Member States concerned. A decision to settle a dispute unilaterally will become final if, with the express written declaration of the person concerned, he/she accepts it within 30 days of the notification, and — where appropriate — in the administrative lawsuit concerning the disputed issue, he/she justifies his/her withdrawal from the action.

If the Hungarian Competent Authority and the Competent Authority of the other Member States concerned accept the complaint, the dispute may be settled by a MAP between the Hungarian Competent Authority and the Competent Authority of the other Member States concerned. The time limit for doing so is two years from the date of notification of the decisions of the competent authorities of the Member States concerned to accept the complaint. This period may be extended by a maximum of one year if the Competent Authority of any of the Member States concerned so requests in writing and gives reasons in writing to the competent authorities of the other Member States concerned.

If the competent authorities of the Member States concerned have reached an agreement within the above period on the resolution of the dispute, the Hungarian Competent Authority will notify the person concerned by an administrative decision. This administrative decision will become final and binding on the Hungarian Competent Authority and the tax authority if the person concerned, within 60 days from the date of receipt of the administrative decision, a) adopts the decision taken by mutual agreement; and b) waives all other remedies in connection with the resolution of the dispute.

Based on the final decision taken by the mutual agreement, the tax authority will immediately amend the original personal tax liability of the person concerned by a decision which will, notwithstanding the limitation period, become enforceable. The person concerned will not be required to pay a late payment surcharge and a tax penalty for the tax liability imposed on him/her as a result of the amended tax liability, nor shall he/she be entitled to interest on the tax to be refunded to him/her. If the competent authorities of the Member States concerned, involved in the MAP, do not reach an agreement within the time limit, the Hungarian Competent Authority shall inform the person concerned by setting out the general reasons for the failure in reaching an agreement.

The person concerned may request the initiation of a dispute resolution by the Advisory Committee if:

(i) The complaint of the person concerned was rejected by one, but not all, of the competent authorities of the Member States involved in the dispute;

(ii) The complaint of the person concerned has been rejected by all the competent authorities of the Member States involved in the dispute, but in proceedings instituted at the request of the person concerned, the competent court of one, but not all, Member States has reversed the decision rejecting the complaint; or

(iii) In a MAP initiated based on a complaint lodged by the person concerned, the competent authorities of the Member States involved in the dispute have not reached an agreement on how to settle the dispute within the time limit.

As a rule, the Advisory Committee, makes a decision within six months of its establishment. The competent authorities of the Member States concerned are required, within six months of receipt of the opinion of the Advisory Committee, to agree to settle the dispute in their decision to close the dispute resolution procedure. The competent authorities of the Member States concerned are required to base their decision to close the dispute resolution procedure on the opinion of the Advisory Committee. If the Member States concerned do not agree on a solution to the dispute, the opinion of the Advisory Committee will become binding on the Member States concerned. Following the decision closing the dispute resolution procedure, the Hungarian Competent Authority will immediately notify the taxpayer in an administrative decision. Within 60 days of the notification of this decision closing the dispute resolution procedure, the taxpayer may declare that it has been accepted and that any other appeal relating to the resolution of the dispute has been waived.

f. Treaty Interpretation

According to Subsection (1) of Section 13 § of Act Nr. L of 2005, when interpreting an international treaty, the decisions of the court or competent authority to rule on legal disputes arising in connection with the given treaty are also to be taken into account. Moreover, the IAC Act specifically mentions the recommendations of the OECD Working Groups which are to be considered when interpreting certain terms or provisions.

That said, courts and authorities in Hungary can freely rely on any instrument (such as *travaux preparatoires*, expert opinions, even foreign language texts etc.) when attempting to interpret treaties. In *Nr. Mf. 640.982/2013/5*, the Metropolitan Court held that not only are the provisions of treaties to which Hungary is a party to be observed, but any other international rules or principles that guarantee universal human rights should be given recognition.

2. Income Tax Treaties

Hungary has entered into tax treaties with more than 75 jurisdictions. Since Hungary is a member of the OECD, these treaties are generally based on the OECD Model Convention, too.

For the texts and status of Hungary's tax treaties, see International Tax Treaties.

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a. Procedure to Claim Reduced or No Withholding, or Refund

Subject to the rules applicable to the type of tax concerned, foreign tax paid may be credited by setting it off against the tax payable in Hungary in the tax return filed by a resident person.

Also, if the Hungarian tax withheld on payments to a nonresident individual is higher than the tax rate to be applied under an applicable tax treaty, the individual concerned may submit an application for refund to the Hungarian tax authorities, with a certificate from the payer and a certificate of residence in the treaty partner country attached. The tax authorities will remit payment of the tax difference to the account indicated by the nonresident individual.[578] In this regard, a nonresident individual may request that the tax authorities remit the payment to a foreign bank account in foreign currency; otherwise, the tax authorities will remit the payment in forint to a Hungarian bank account. The form requesting a refund is to be filed with the local tax authorities competent for the Hungarian place of residence. For this purpose, the general form for personal income tax return may be used, or a separate form, Form ATVUT17 (see Worksheet 6).

b. Taxation of Business Income

(1) Permanent Establishment

As already noted, most of Hungary's tax treaties are based on the OECD Model Convention and therefore define "permanent establishment" in accordance with the definition contained in the Convention. The provisions of particular treaties may vary depending on the other Contracting State, but most of them follow the concepts established in the Convention. The following discussion is largely based on the Hungary-Germany tax treaty concluded on February 28, 2011, which can serve as a typical example to illustrate the terms of Hungary's treaties.

(2) Industrial or Commercial Profits

Business profits are taxable only in the Contracting State in which the company deriving them is resident, unless the company carries on business in the other Contracting State through a permanent establishment (PE) situated therein. In that case, the profits of the company may also be taxed in the State in which the PE is located, but only to the extent the profits are attributable to the PE.[579]

Where a company of a Contracting State carries on business in the other Contracting State through a PE situated therein, the PE is to be treated as a separate and distinct entity and the allocation of profits to each PE is based on this principle.[580] In determining the profits of a PE, expenses incurred for purposes of the PE are allowed to be deducted, including executive and general administrative expenses, irrespective of the place where the expenditure was incurred.[581] No profits are to be attributed to a PE, however, by reason of the mere purchase of goods or merchandise by that PE for the enterprise of which it is a PE.

c. Taxation of Investment Income

(1) What Is Investment Income?

(a) Dividends

Dividends paid by a legal entity resident in one Contracting State to a resident of the other Contracting State may be taxed in that other State.[582] At the same time, such dividends may be taxed in the State in which the legal entity is a resident in accordance with the law of that State, though the rate at which that State may impose its tax is limited to a specified maximum rate. Many treaties will provide for more than one maximum source State rate, with the lower rate applying to dividends paid to corporate shareholders holding a minimum percentage interest in the distributing company.

Within the European Union, under Council Directive of July 23, 1990, on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (90/435/EEC), the Member State of residence of a subsidiary company may not charge withholding tax on dividends that the subsidiary distributes to a parent company resident in another Member State.

(b) Interest and Royalties

Interest and royalties arising in Hungary and beneficially owned by a resident of the other Contracting State are generally taxable only in that other State, i.e., the State in which the recipient is resident. The recipient certifies his or her residence in the other Contracting State by way of a tax residence certificate.[583] Where the applicable tax treaty allows the income to be taxed in the State in which the income is sourced, there is usually a cap of 10% to 15% on such tax. Where the source country is the other Contracting State, the foreign tax payable in the other Sate may be deducted from the tax payable in Hungary.

(c) Capital Gains

Capital gains from real property are taxable in the Contracting State in which the real property is located, whereas capital gains from movable assets and securities are taxable in the Contracting State in which the taxpayer disposing of the assets is resident. Thus, capital gains derived from the disposal of real property located abroad cannot be taxed in Hungary, while capital gains derived from the disposal of shares by a Hungarian resident person on a foreign stock exchange are typically taxed in Hungary.[584]

(2) Withholding Tax Rates

The maximum rates of withholding tax vary from treaty to treaty but are generally in the range of 5% to 15%. The lower rate of 5% usually applies to dividends, when the beneficial owner of the dividends is a company and holds a specified percentage in the share capital of the company paying the dividends. The withholding rate on interest is usually between 10% and 15%.

[578] PIT Act, Schedule 7.
[579] Hungary-Germany tax treaty, Art. 7.
[580] Hungary-Germany tax treaty, Art. 7(2).
[581] Hungary-Germany tax treaty, Art. 7(3).
[582] Hungary-Germany tax treaty, Art. 10.
[583] Hungary-Germany tax treaty, Art. 11.
[584] Information Bulletin Nr. 4 of the National Tax Authority.

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3. Estate/Inheritance Tax Treaties

Hungary has entered into inheritance tax treaties with a small number of countries. The general principle under such treaties is that the inheritance tax with respect to real property is payable in the Contracting State in which the real property is located. This principle also applies to the inheritance of a share in a business, which is taxable in the Contracting State in which the business is located. With respect to other assets, the domicile of the testator is decisive for determining the Contracting State in which the inheritance is taxable.

4. Exchange of Information Agreements

Within the European Union, the exchange of information in tax-related matters is governed by Council Directive 2011/16/EU of February 15, 2011, on administrative cooperation in the field of taxation, which repealed Directive 77/799/EEC. The Directive applies to taxes of any kind levied by, or on behalf of, an EU Member State or its territorial or administrative subdivisions, including local authorities. The Directive does not apply to value added tax (VAT) or customs duties, or to excise duties covered by other EU legislation on administrative cooperation between EU Member States. Nor does the Directive apply to compulsory social security contributions.

Under the Directive, the exchange of information can be on request, mandatory and automatic, or spontaneous. The mandatory and automatic exchange of information applies with respect to the following specific categories of income and capital: (i) income from employment; (ii) director's fees; (iii) life insurance products not covered by other EU legal instruments on the exchange of information or other similar measures; (iv) pensions; and (v) ownership of and income from immovable property.

The Directive was amended by Council Directive 2014/10/EU of December 9, 2014, so that it is in compliance with the Convention on Mutual Administrative Assistance in Tax Matters adopted by the OECD. Hungary signed the OECD Convention on November 12, 2013, and the Convention entered into force on March 1, 2015. The detailed rules are set out in the Multilateral Competent Authority Agreement. Hungary commenced exchanges for the first exchange of information in September 2017. Under the system established by the OECD, Hungarian financial institutions will collect information on the reportable accounts and transmit it to the Hungarian competent authority. The Hungarian competent authority will then transmit the information to the countries affected by the information. Hungary currently has Exchange of Information agreements with over 70 countries.

Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements ("DAC6 Directive") was implemented into Hungarian Law by Act LXXII of 2019 by way of inserting the text into the IAC Act. Initially, these provisions were to enter into force on July 1, 2020, but the effective date was postponed until January 1, 2021, because of the difficulties imposed on people by the COVID-19 pandemic. The purpose of the DAC6 Directive is to enable the tax authority to get comprehensive and relevant information on cross-border arrangements in the field of taxation and to convey such information to the tax authorities of the other Member States of the European Union. Since the DAC6 Directive had a retrospective effect to a certain extent, those cross-border transactions covered by the Directive where the first step of implementation was between June 25, 2018 and June 30, 2020 had to be reported by February 28, 2021. Where the event occurred in the second semester of 2020, the reporting deadline expired on January 30, 2021. After the entry into force of the Act implementing the Directive in Hungary (i.e. January 1, 2021), the reporting deadline is 30 days beginning:

(i) On the day after the reportable cross-border arrangement is made available for implementation;

(ii) On the day after the reportable cross-border arrangement is ready for implementation; or

(iii) When the first step in the implementation of the reportable cross-border arrangement has been taken,

whichever occurs first.[585]

In harmony with the Directive, as a general rule, the reporting obligation falls upon the intermediary, and the relevant taxpayer is only secondarily bound by this obligation (i.e. when the intermediary notifies the relevant taxpayer that the reporting would be in breach of the obligation for confidentiality laid down in the domestic legislation governing his activity and no other intermediary is involved; or the intermediary has no EU nexus; or there is no intermediary involved in the arrangement.)[586]

The Ministry of Finance has issued guidance[587] on the interpretation of the DAC6 Directive. The guidance contains definitions of terms that are not defined in either the DAC6 Directive or the IAC Act implementing the Directive such as "arrangements", "made available for implementation," or "ready for implementation," even providing applicable examples. For instance, the term "arrangement" is to be interpreted broadly and may cover any type of transaction, payment, structure or agreement. The term includes any arrangement containing more than one step or series of arrangements. Accordingly, the incorporation, acquisition, merger, demerger or dissolution of a company, or the establishment of a branch may be viewed as an arrangement. The organization board meetings at a place other than a company's place of registration with a view to changing its domicile may also qualify as an arrangement. The Guidance also provides that service providers that render routine services (for example, accounting or payroll services) will most likely not be regarded as intermediaries, as active and willful cooperation in an arrangement is essential for a person to qualify as an intermediary. On the other hand, the Guidance specifically names lawyers specialized in tax law, tax advisory companies and in-house tax departments as examples of persons that will be viewed as intermediaries.

The reporting has to be done electronically using the form "KONSTR," which can be downloaded at https://nav.gov.hu/nav/letoltesek/nyomtatvanykitolto_programok/nyomtatvanyki-

[585] IAC Act, Sec. 43/U(3).

[586] IAC Act, Sec. 43/W.

[587] Available at https://cdn.kormany.hu/uploads/sheets/8/86/860/86079bbdc998887093d10be76e13a2e.pdf.

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tolto_programok_nav/adatbejelentok_adatmodositok/KONSTR.html.

A party failing to comply with its reporting obligation can be fined up to HUF 500,000, the fine is increased to HUF five million if the party has received a prior notice from the tax authority to comply with the reporting obligation.[588]

The "main benefit test" as well as the various categories of hallmarks are incorporated in Hungarian law the same way as they are regulated under the DAC6 Directive. The Guidance describes the main benefit test as an objective test that focuses merely on the result rather than on the taxpayer's intention. The obtainment of the tax advantage does not have to be the sole result of the arrangement; it is sufficient if it is just one of the main benefits. However, the test is not satisfied if the tax advantage is merely randomly linked to the arrangement, or the available tax benefit is negligible compared to the other benefits. The term "tax advantage" is, thus, to be understood broadly to include any arrangement which results in a reduction in tax liability. However, for Hungarian reporting purposes, the definition of "tax advantage" may be interpreted narrowly, not considering the tax benefits provided by Hungarian legislation, if the underlying arrangement is based on real economic or commercial reasons.

The Guidance issued on this topic contains some useful and practical examples for hallmarks, and also provides helpful insights on how these hallmarks are to be interpreted. For example, in relation to Hallmark C.4. in the DAC6 Directive, the Guidance stipulates that a price difference will be material if there is a difference of 40%, or HUF500 million (approximately 1.4 million euros) between the two values.

In view of the rapid digitalization of the global economy in recent years, in 2020, the OECD released its Model Rules for Reporting by Platform Operators ("MRDP"), which came in response to growing calls for a global reporting framework for activities being facilitated by digital platforms, in particular in the sharing and gig economy. In the footsteps of the OECD, the Council of the European Union adopted Council Directive (EU) 2021/514 of 22 March 2021 ("DAC7 Directive"), which extends automatic exchange of tax information to data provided by digital platform operators by extending the scope of Article 8 introduced by the DAC6 Directive.

Hungary transposed the DAC7 Directive into Hungarian law by amending the IAC Act. Accordingly, effective from January 1, 2023, digital platform operators are required to comply with certain notification, change notification, due diligence, registration and reporting obligations.

Under the new law, the following platform operators are subject to the DAC7 reporting obligations: (i) platform operators resident for tax purposes in Hungary; (ii) platform operators that are not resident for tax purposes in the EU but are either registered in Hungary, have their place of business (including the place of effective management) in Hungary or have a permanent establishment in Hungary. If a platform operator does not meet any of the above conditions, it may still subject to the reporting obligation if it allows a relevant activity to be carried out on its platform by sellers who are subject to the reporting obligation, or who generate income by letting immovable property in Hungary.[589]

For platform operators already operating at the time of the entry into force of the new law, the deadline for the one-off notification was February 15, 2023. From then on platform operators must make their notification within 15 days of becoming a platform operator subject to the reporting obligation.

As stated above, platform operators have a due diligence obligation in respect of the persons selling on the platform they operate and, in this context, also a reporting obligation to the tax authority. The first reporting obligation is due by January 31, 2024.

The platform operator must report to the tax authority on those sellers who: (i) were registered on the platform and engaged in the relevant activity at any time during the reporting period, (ii) have actually carried out the relevant activity during the reporting period, or have been paid or credited in respect of the relevant activity during the reporting period, and (iii) are resident in an EU country or rent immovable property located there.

There are certain sellers who are excluded from the scope of this reporting obligation, namely: vendors whose stock is publicly traded on a regulated stock market or to whom the platform operator has made less than 30 sales of goods during the reporting period and the total amount of the consideration paid or credited did not exceed 2,000 euros, as well as sellers who rent the same immovable property over 2,000 times on the platform during the reporting period.[590] Government entities are likewise excluded from any reporting obligations.

If the platform operator fails to comply with its reporting or record-keeping obligations, or fails to do so late, incorrectly, with untrue content or incompletely, the tax authority may impose a default fine of up to HUF two million. However, no default penalty may be imposed if the person obliged to report, notify changes or provide information excuses their default, delay, incorrect, untrue or incomplete performance by proving that they acted as is normally expected under the circumstances.[591]

C. Tax Treaties with the United States

1. Income Tax Treaty

Hungary and the United States signed a treaty for the avoidance of double taxation of income on February 12, 1979 (the "1979 Hungary-U.S. tax treaty").[592] Another tax treaty was signed between the two countries on February 4, 2010 (the "2010 Hungary-U.S. tax treaty").[593] The 2010 Hungary-U.S. tax treaty has been ratified by the Hungarian Parliament[594] but is

[588] IAC Act, Sec. 43/Z.

[589] IAC Act, Sec. 21/A(1).

[590] IAC Act, Sec. 21/B.

[591] IAC Act, Sec 21/H.

[592] Convention between the Government of the Hungarian People's Republic and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed on February 12, 1979. Government Decree No. 49/1979 (XII.6).

[593] Convention between the Government of the United States of America and the Government of the Republic of Hungary for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Budapest on February 4, 2010.

[594] Act No. XXII of 2010.

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still awaiting ratification by the U.S. Senate. Since the treaty will enter into force on the day the ratification documents are exchanged, this treaty is not yet applicable. Pending the ratification and subsequent entry into force and effect of the 2010 Hungary-U.S. tax treaty, the 1979 Hungary-U.S. tax treaty was applicable until December 31, 2023, when it ceased to apply as from January 1, 2024, as on July 8, 2022, the U.S. government sent a formal notification to Hungary of its intent to terminate the agreement.

The termination of the tax treaty with the United States has had serious adverse implications both for individuals and for corporations, some of which are discussed below.

Generally, a double taxation treaty defines which income is subject to withholding tax in the country from which it originates and, where applicable, the maximum rate of the withholding tax. The previous U.S.-Hungary tax treaty only allowed withholding tax on dividends (at a maximized rate). Interest, royalties and service fees were taxable in the country of residence of the taxpayer.

While Hungary does not impose withholding tax on income paid to foreign companies, the United States, on the other hand, applies high withholding taxes (30% at the federal level) on payments made to countries with which the U.S. does not have a double tax treaty in force. This withholding tax does not only apply to capital income from US source but also to service fees paid to Hungarian companies.

Therefore, the termination of the U.S. — Hungary tax treaty is painful for Hungarian companies generating income from the U.S., even though, to some extent, the withheld tax can be deducted for Hungarian corporate income tax purposes. There is a risk that as a result, multinational corporations will reorganize their operation in such a manner that they will sell to U.S. clients from their permanent establishment which is located in a country which has a tax treaty in place with the U.S and consequently discontinue a certain part of their business in Hungary. Obviously, this is a major competitive disadvantage, which may, on the long run, stifle innovation.

In addition, certain other incomes have become taxable: U.S. companies that have a Hungarian subsidiary holding real property and sell their interest in the subsidiary after 2023 will be subject to corporate income tax. Also, income from real property may be taxed in both countries, which previously was only taxable in the country where the real estate is located.

Furthermore, the term "permanent establishment" is no longer defined by the tax treaty, but pursuant to the local laws. For example, while the tax treaty was in place construction activity had to last 24 months in order for it to create a permanent establishment in Hungary for taxation purposes, now, the time limit is three months.

The tax treaty with the United States also set a cap on the tax liability in the source country for dividend income: accordingly, the U.S. tax liability on dividends paid by a U.S. company to a Hungarian company could not exceed 5% or 15% (depending on the ownership ratio of the beneficial owner receiving the dividend). As of January 2024, this limitation no longer applies and the U.S. domestic rules for withholding tax are applicable (30% withholding tax).

Another negative impact is that one person can now be treated as a resident for taxation purposes both in Hungary (on the grounds that he or she lives there) and in the U.S. (on the grounds that he or she is a U.S. citizen). Hence, both countries are entitled to tax the individual's worldwide income, and it is up to domestic rules to decide how and to what extent the tax paid abroad is considered.

2. Estate/Inheritance and Gift Tax Treaty

Hungary has no estate/inheritance nor gift tax treaty with the United States.

3. Exchange of Information Agreement

Hungary has signed a bilateral agreement with the United States on the implementation of FATCA. The agreement entered into force on July 4, 2015. The treaty is based on Model 1.

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