

Tax law changes 2009-2010

Amendments to legal regulations
affecting foreign (non-resident)
companies
28 July 2009

Main measures aiming to prevent tax evasion

& Part I

Imposing taxes on undistributed profits generated at foreign companies (with respect to companies)

& Part II

Tax payment obligation of the foreign member of the company owning real estate (with respect to companies)

& Part III

Introduction of withholding tax on payments under certain legal title to countries that have not signed an agreement for the avoidance of double taxation (with respect to companies)

Part I

*Imposing taxes on undistributed profits
generated at controlled foreign companies*

A) Notion of “controlled foreign company”

Major elements of the definition:

- There is a Hungarian beneficial owner company in the foreign company
 - Beneficial owner shall mean a person who has at least 25% of the voting rights or the ownership share or who has controlling influence (meaning a person who has the right to appoint, remove the majority of the supervisory board members, executive officers, or who solely disposes over at least 50% of the voting rights pursuant to an agreement concluded with other members)
- Those companies shall qualify as a controlled foreign company where the ratio of the payable tax and its tax base is below the two thirds of the Hungarian corporate tax (that is 12.66 % from year 2010), or if the foreign company does not pay any taxes corresponding to corporate tax because its tax base is zero or negative, although its profit is positive. These conditions shall not be applicable to EU, OECD member states or any such company that is domiciled in a country that has signed an agreement for the avoidance of double taxation with Hungary, provided that such company has real economic presence in the given country.
 - Real economic presence shall mean production, processing, agricultural, service, investment or trade activity carried out jointly by the foreign company and its affiliated companies in the given country, with their own assets and employers employed under employment contracts, provided that their income from these activities reaches at least 50% of their total income. This is to be verified by the taxpayer!

B) Tax payable on the undistributed part of the profit

- The positive distributed after-tax profit minus the dividend (proportionately with the taxpayer's direct share in the controlled foreign company on the last day of the tax year) determined on the last day of the tax year of the controlled foreign company shall be added to the Hungarian company's pre-tax profit, provided that the taxpayer has at least 25% of the voting rights or the ownership share or has controlling influence in this company, and that no resident natural person has any shares in the taxpayer, neither directly nor indirectly.
- In terms of the tax base the extent of the tax is 19%.

C) Definition of “other income” in case of natural persons

- The unpaid part of the after-tax profit of the controlled foreign companies due to the natural person owner shall qualify as other income of the natural person if the direct or indirect participation in profits of the natural person or his voting rights reach 25%.
- Pursuant to the law, the interest and dividend paid by the foreign company shall be taxed as other income as well, provided that such amount has not been taxed as undistributed profit, and also the exchange gain realized in connection with sale of the shares of the controlled foreign company.

Part II

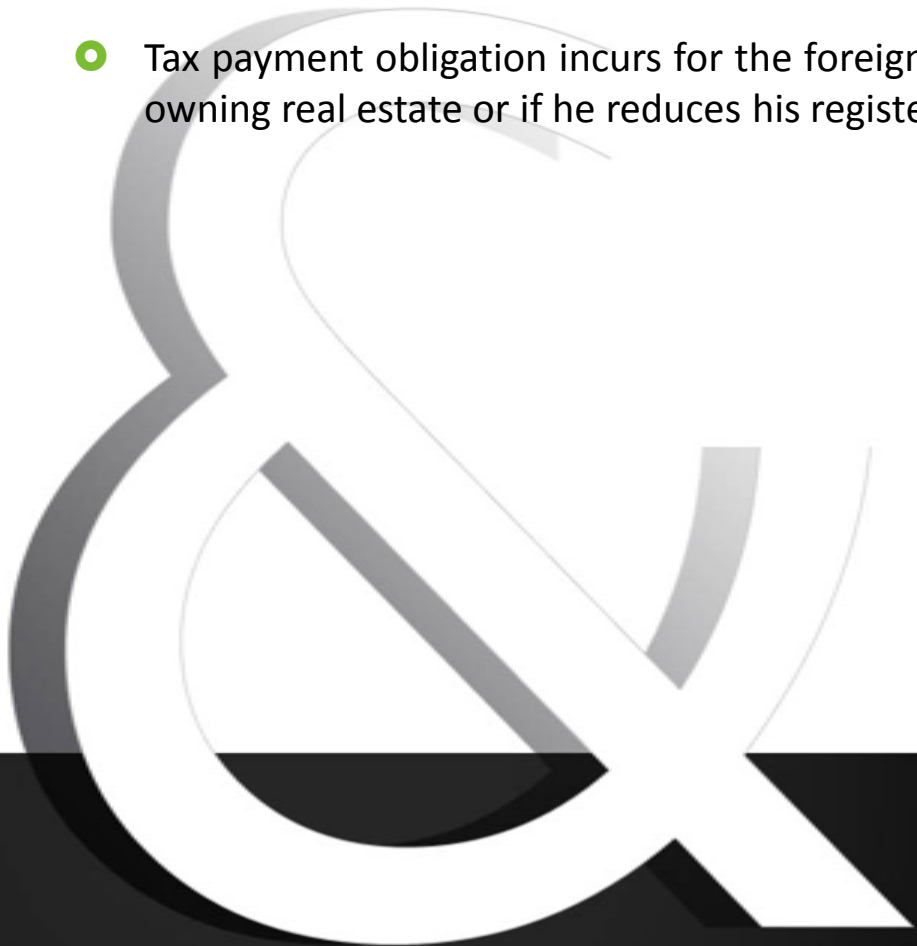
*Tax payment obligation of the foreign member
of the company owning real estate*

A) Definition of the “company owning real estate”

- a member of any of them resides in any country for at least The taxpayer or the affiliated companies of the taxpayer owning real estates situated within the country shall qualify as a company owning real estate in case the value of the real estates situated within the country represents more than 75% of the total market value of the assets determined in the annual report for the tax year of the taxpayer and its affiliated companies owning real estates, and provided that one single day of the tax year with which Hungary has not signed an agreement for the avoidance of double taxation or if such agreement allows taxation of the exchange gain in Hungary.

B) Occurrence of the tax payment obligation

- Tax payment obligation incurs for the foreign person if he alienates his share in the company owning real estate or if he reduces his registered capital by withdrawal of capital.

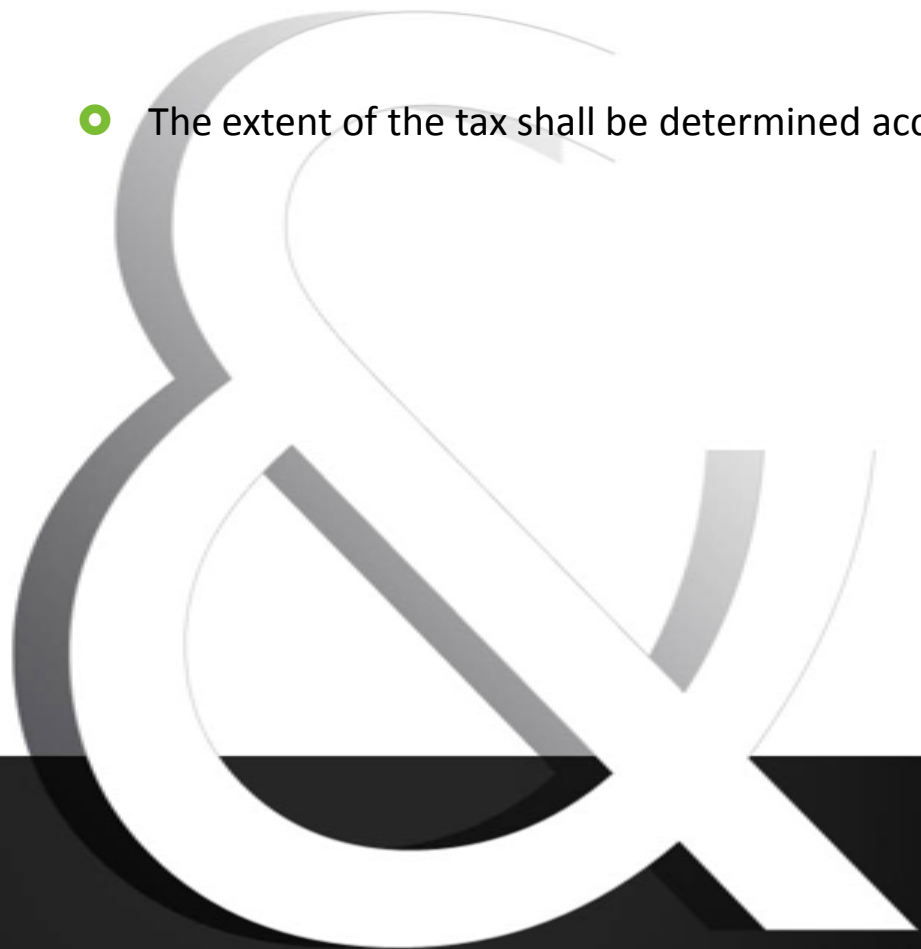


C) The base of the tax

- The tax base (z) shall equal the consideration upon alienation of the share or reduction of the registered capital of the company (x) minus the acquisition value of the share and the certified costs connected to acquisition or ownership (y), provided that such amount is positive.
- $Z=x-y$, provided that the result is positive

D) Extent of the tax

- The extent of the tax shall be determined according to the general key (19% from 2010)



Part III

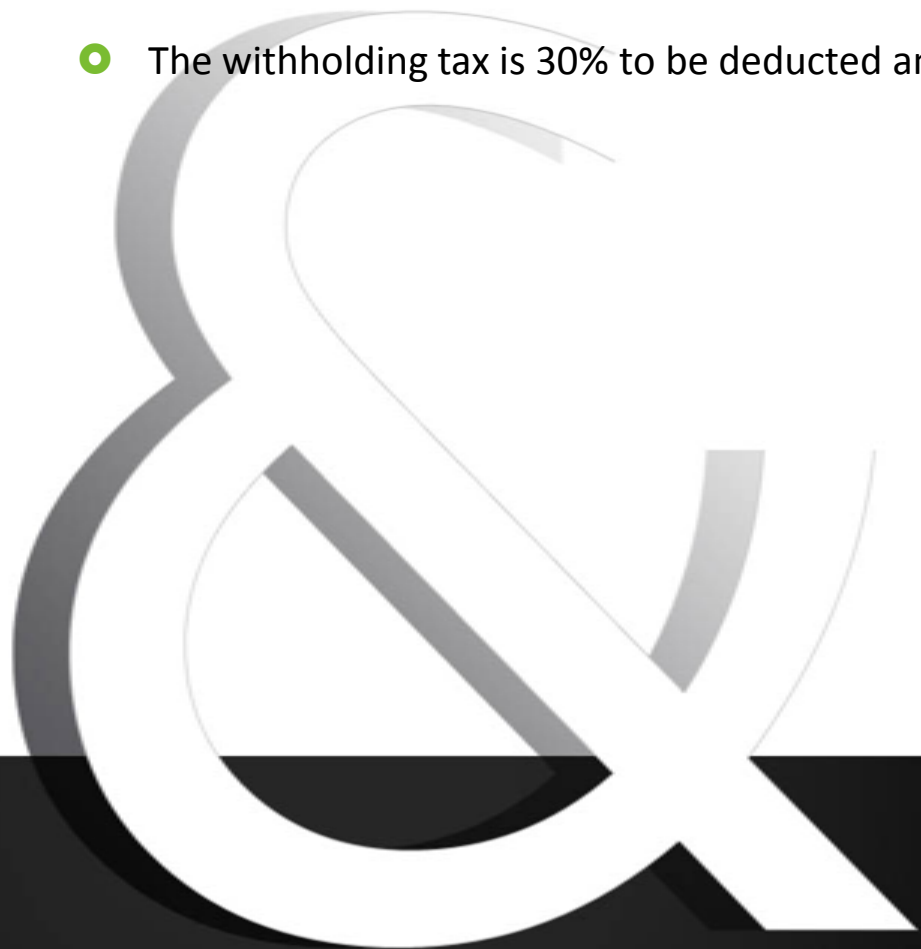
Introduction of withholding tax on payments under certain legal title to countries that have not signed an agreement for the avoidance of double taxation

A) Subjects of the withholding tax

- The taxable person shall be the foreign person or non-resident person to whom the resident non natural person taxpayer pays
 - Royalty
 - Interest
 - Service charge (charge for management, business and management consultancy, advertisement, market and public opinion polling activity or the agency fee for other professional, scientific, technical activity not elsewhere classified)
- provided that no agreement for the avoidance of double taxation is signed with the country where the foreign person resides.

B) Extent of the withholding tax

- The withholding tax is 30% to be deducted and paid by the payer



NOTICE

- Please be informed that the information contained in this document is **not exhaustive** as far as the tax law amendments for year 2010 are concerned. The further and detailed rules are specified in Act LXXVII of 2009! We do not assume any liability for any damages resulting from the above.
- Should you be in need of specific information, please contact our colleagues!

Thank you for your precious attention!

