

## SME INFO HU

### SUMMER TAX PACKAGE AND CHANGES OF EXTRA PROFIT TAXES – JULY 2022, HUNGARY



The purpose of SME INFO is to provide general information and to draw the attention to the current changes in law which we believe to be important for the business operation of our clients. It is not a replacement for careful review of the acts and rules, and the consultation with your tax advisor.

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In this newsletter we will cover more topics. First, several tax laws were amended at the same time when the 2023 budget was adopted. We take a look at them, highlighting the changes we consider important. On the other hand, in SME INFO 2022-01, we provided information on the Government

Decree 197/2022 (4.VI) on extra profit taxes. This Government Decree has been amended on some points by Government Decree 257/2022 (VII.18). Here we also summarise the most important changes and clarifications.

PS' SME Team

# I. ACT XXIV OF 2022 – AMENDMENTS TO THE TAX LAWS UNDERPINNING THE 2023 CENTRAL BUDGET

## 1) Corporate Tax

### a) Transfer pricing <sup>(1)</sup>

The most significant tax-related element of the Budget Law 2023 is in the corporate tax, including the regulation of the arm's length market price (transfer price).

- Under the adopted amendment, taxable persons required to keep transfer pricing records shall declare to the tax authorities, together with the corporate tax return, the arm's length market price determination. The detailed content of the declaration will be set out in a future regulation to be issued by the Ministry of Finance. This amendment will also eliminate – or make very difficult – the current practice of preparing retrospective transfer pricing records after the deadline. For the first time, the declaration will be required for tax returns submitted after 31 December 2022.



#### Methodological clarification (1)

Whereas in previous years the use of the so-called interquartile range was only recommended for the analysis of market values in transfer pricing records – and thus the use of the minimum-maximum values of the market range was possible – the change now requires the mandatory use of the interquartile range. In the range thus cleared of upper and lower interquartile values, further filtering and analysis will of course still be required, but the amendment rather defines the base/starting data in this way. In addition, we note that the so-called upper and lower interquartile range refers to the lower and upper 25% extremes of a given market range. Thus, the interquartile range is considered to be above the lower 25% and below the upper 25% values. The first application of the rule will be mandatory in the records of the tax year beginning in 2022.

§ (1) Act LXXXI of 1996 4.§ 31d; 31e; 18.§ (5), (9), (11)-(12), 29/A.§ (104)-(106), 30.§ (8)



#### Methodological clarification(2)

A new rule is introduced in the transfer pricing adjustment, that if the price applied between related parties falls outside the arm's length market price range, the mandatory correction should be adjusted to the median value of the range. [In any case, the practice of the tax authorities has been the same] This may, of course, be deviated from by the taxable person, but in this case the taxpayer will have to prove that the value determined by them in the transaction in question – and not the median – is the one that best reflects the principle of the arm's length market price. First application will be mandatory for the tax year starting in 2022.

- The amendment establishes the principle that all values within the arm's length market range are considered to be market values and therefore no adjustment to the tax base is required. In essence, the rule from the OECD Transfer Pricing Directive is confirmed here, which could resolve many future disputes. Its application will be possible – for the first time – in the tax year starting in 2022.



Date of entry into force: on 30th day after announcement, 26 Aug 2022

The transfer pricing rules in corporate tax also have an impact on a number of other laws, as the other tax laws refer to the Corporate Tax Act. In the framework of the recent transfer pricing amendments, changes were also transferred to other tax laws such as small business tax (KIVA), so that the taxable persons in the small business tax shall also follow these rules. Small taxable businesses that are affiliated companies will have to apply the modified transfer pricing rules when they prepare their tax assessment for the tax year 2022.



Date of entry into force: on 30th day after announcement, 26 Aug 2022

The regulations on transfer pricing are also amended in the *Rules of Taxation*, which is explained in the relevant section.

## b) New tax base adjustment items – impairment loss recognised on shareholdings <sup>(2)</sup>

The amendment introduces two new but related tax base adjustments to corporate tax related to shareholdings. They will be applied for the first time in the tax year 2022.

- It will be a new tax base-increasing item if a taxpayer recognises an impairment loss on the year-end valuation of shares (equity securities) in its books as a charge to profit before tax. In this case, the corporate tax base will be increased by the amount of the impairment loss recognised.
- The “counterpart” of the new tax base increase is the tax base reduction option available on the derecognition of previously impaired shareholdings. At the time of derecognition, the amounts of impairment losses that were accounted for in previous years and declared as tax base increases can be deducted as a tax base reduction item. The legality of the deductions must be verified by reference to previous annual tax returns and their underlying analytical accounts, as required by the amendment of the law.

The logic of the new adjustment is in line with other tax base adjustments based on the consistency of corporate tax and accounting law, such as the provisioning.



**Example:** A taxpayer has 25% share in Z Kft., recorded in its books for HUF 1000 thousand. At the end of the 2022 financial year (here the same as the calendar year), Z Kft. recognises an impairment of HUF 250 thousand against the pre-tax result [PBT] due to its market valuation. In 2022, the tax base will be increased by the amount of the impairment. In the financial year 2023, it will again recognise an impairment loss on the shares of HUF 500 thousand to be charged to the PBT. Here again, it will increase its tax base.

At the end of the financial year 2024, the shares of Z Kft. will be derecognised from the books due to a sale. Then, regardless of other factors, it can reduce its tax base in 2024 by the HUF 750 thousands of impairment loss recognised and adjusted in 2022 and 2023.



Date of entry into force: 28 Jul 2022



(2) Act LXXXI. of 1996 7.§ (1) j) és 8.§ (1) w)

## 2. VAT

### a) Group taxation arrangement <sup>(3)</sup>

The newly adopted law amends the VAT Act on several points, affecting group tax liability in that it clarifies a previous legal loophole. Previously, the representative appointed by the members could be the subject to judicial and other procedural acts relating to the exercise of the rights and obligations associated with group tax liability, but the paragraph did not provide for the possibility of the same representative being subject to such acts after the termination of group tax liability. The amendment now makes this clear.



Date of entry into force: 28 Jul 2022

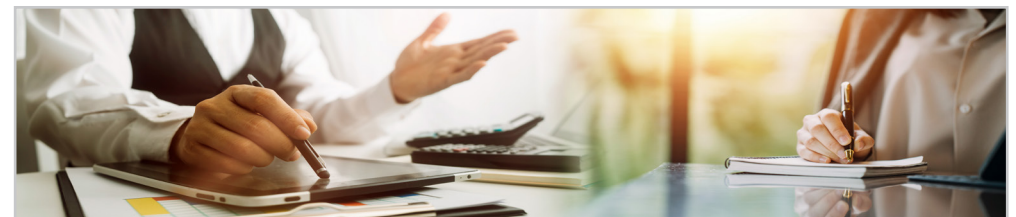
### b) Subsequent reduction of the tax base <sup>(4)</sup>

*Article 77 in the Act on VAT* provides for the subsequent reduction of the taxable amount. It sets out the cases in which the taxable amount may be reduced in the case of a refund payment.

This is supplemented by the fact that the right to a reduction of the taxable amount may also apply where a refund is not made directly to the customer to whom the supply of goods or services giving rise to the refund was made. There are two further conditions which must be met together:

- the final consumer is not entitled to deduct all or part of the tax in the transaction, and
- the amount of the refund (without VAT) is included in the taxable amount of the transaction giving rise to the refund.

However, the application of this provision is not conditional on the refund granted by the taxable person to the final consumer being included in the taxable amount of the supply of goods or services for which the discount was granted, it may also be included in a subsequent supply, provided that they are subject to the same VAT rate.



(3) Act CXXVII of 2007 8.§ (4)

(4) Act CXXVII of 2007 77.§ (4a) & (4b), 153/B.§ (1) e)



**Support the transaction:** The taxable person refunding the money must have independent third-party documentation clearly certifying that the taxable transaction giving rise to the refund was carried out in the country, that the taxable person paid the amount of the refund and a document clearly certifying that the refund was made in respect of the customer for whom the goods or services giving rise to the refund were supplied.



**Self-revision issue:** The taxable person providing the refund does not have to carry out a self-assessment, but can deduct the amount concerned at the earliest in the tax assessment period covering the date of the refund.

Importantly, the new provision does not apply in the case of reverse charge and the amount refunded is deemed to include tax (VAT).



**Interesting fact:** The reason for this amendment of the act is that in 2021, the European Court of Justice ruled in a preliminary ruling procedure that the provision of the Hungarian VAT Act requiring the conditions of the payment (refund) to be predetermined in the taxable person's business policy and the payments to be made for the purpose of promoting a purchase is not in conformity with Community law. Thus, for example, pharmaceutical distributors from now on will be able to apply the subsequent tax base reduction to their previously invoiced sales revenue in relation to so-called subsidy volume contracts, since under these contracts they will repay part of their sales revenue to the National Health Insurance Fund of Hungary (NEAK) after the sale.

The new provision will apply from the date of entry into force of the act, and also for refunds made after 31 December 2021, provided that the taxpayer has not otherwise claimed the tax base reduction.



It should be noted that in accordance with the above provisions, the Act on the General Rules for the Marketing of Medicinal Products will also be amended, under which the amount of the payment obligations will be reduced by the amount paid to NEAK, excluding VAT.



Date of entry into force: 28 Jul 2022

### 3) Personal income tax

Minor clarifications, but worth to note the change relating to the fuel cost standard for plug-in hybrid and fully electric cars, the other changes are only highlighted as we consider relevant.

#### a) Fuel consumption allowance for plug-in hybrid and fully electric cars <sup>(5)</sup>

A consumption standard has also been set for plug-in hybrid vehicles and pure electric vehicles. For the former, it is equal to 70% of the fuel consumption standard for road vehicles, taking into account the cylinder capacity, while for the latter it is equal to 3 litres/100 km multiplied by the price of unleaded petrol ESZ 95 published by the Tax Authority. The reimbursement of the cost of using a private car, which can be paid/charged without a certificate, will be modified accordingly.



(5) Act CXVII of 1995., Annex 3, II. 4., 4a., 6. & IV. 1., & Annex 11, III. 1.



## b) Fuel cost based on consumption rate <sup>(6)</sup>

The method for determining the fuel price has been modified. It has been clarified which fuel distributors' prices can be taken into account (they must have a network covering at least three counties) and the prices of up to three fuel distributors - instead of the three previously required - can be taken into account when determining the fuel price rate.

 Date of entry into force: 28 Jul 2022


## c) Tax residency certificate of foreign private individuals <sup>(7)</sup>

The deadline for non-resident individuals to submit their residence certificate has been clarified: if they have not submitted their residence certificate to the payer during the year, they must do so by 12 January of the year following the tax year, that is by the due date of the payer's O8 return for the month of December.

 Date of entry into force: 28 Jul 2022

## d) Allowance declaration of private individuals under the age of 25 years <sup>(8)</sup>

Individuals who are entitled to the youth allowance for under 25 years can declare that they do not wish to claim the allowance not only to their employer or to the payer who provides them regular income, but to all payers, thus avoiding the year-end tax liability.

 Date of entry into force: 28 Jul 2022

## 4) Social contribution tax

There are two minor clarifications that we would like to draw your attention to:

- If a person earns both income taxable and non-taxable in Hungary, the proportion of taxable income in Hungary will be calculated – also in the Social Security contribution system - in proportion to the number of working days (previously it was calendar days). <sup>(9)</sup>
- The concept of the basic wage applicable in the case of posting abroad, which was in contradiction with the *Social Security Act*, was removed from the *Social Contribution Act*. <sup>(10)</sup>

 Date of entry into force: on 30th day after announcement, 27 Aug 2022

 (6) Act CXVII of 1995. 82.§ (2)  (7) Act CXVII. of 1995. Annex 7, 6.

 (8) Act CXVII of 1995. 48.§ (3d)  (9) Act LII of 2018. 1.§ (8)  (10) Act LII of 2018. 34.§ (8)

## 5) Innovation contribution <sup>(11)</sup>

The amendment extends the innovation contribution payment obligation to the premises – as defined in the *Act on Local Taxes* – of a foreign-based company, including its Hungarian branch. Newly added taxpayers will be required to establish an advance payment of innovation contributions for the 2022 tax year and the first two quarters of the 2023 tax year.

- They have to assess, declare and make the 2022 advance payment until 20 October 2022. The advance payment is calculated on the basis of the expected innovation contribution for the period from the 31st day after the publication of this amendment (27.08.2022) until the end of the tax year 2022.
- The advance payment for the first two quarters of the 2023 tax year shall also be assessed and declared by 20 October 2022, with the payment deadline being the 20th day of the month following the quarters. The amount to be paid is 25-25% of the expected innovation contribution for the full tax year 2022.

The amount of the liability for the tax year 2022 – for those premises of a foreign-based company who will be subject to this contribution as of 27 August 2022 – can be determined in two ways, either in proportion to time or by preparing an accounting closing for the day before the premise becomes subject to the contribution (26 August 2022).



 Date of entry into force: on 30th day after announcement, 26 Aug 2022

## 6) Company car tax <sup>(12)</sup>

The nearly doubled company car tax amounts introduced by the *197/2022 Government Decree* will survive the emergency situation by being included in the vehicle tax act.

Power (kW)	Environmental class marks and Monthly rates of company car tax (HUF)		
	„0”-„4”	„6”-„10”	„5”; „14-15”
0-50	30 500	16 000	14 000
51-90	41 000.	20 000	16 000
91-120	61 000	41 000	20 000
above 120	81 000	61 000	41 000

 Date of entry into force: 1 Jan 2023

 (11) Act LXXVI of 2014. 15.§ (1), 16.§ (13), 51.§  (12) Act LXXXII of 1991. 17/E

But remember that the increased tax rates are already in force for the second half of 2022 under *Government Decree 197/2022*.

## 7) District heating service <sup>(13)</sup>

The Act on Making District Heating More Competitive is amended in that amounts allocated to public trust funds performing public functions are exempted from the tax base increase in accordance with *Annex 3, point B) 25 of the Corporate Tax (TAO) Act*.

The change can be taken into account already in the 2022 tax year, at the taxpayer's option.

 Date of entry into force: 28 Jul 2022

## 8) Act on Rules of Taxation

The tightening transfer pricing regulations also have an impact on the *Act on Rules of Taxation (Art.)*.

### a) The arm's length price (APA) procedure <sup>(14)</sup>

Previously, the fee for the procedure to establish the arm's length price was HUF 2 million per party involved in the procedure initiated. The new rules increase the fee to HUF 5 million for unilateral proceedings and HUF 8 million for bilateral or multilateral proceedings. Please note that no instalment or deferral of payment of the fee will be allowed.



It should be noted that an audit before allotment can be carried out during the procedure under the amended act.

### b) Transfer pricing documentation <sup>(15)</sup>

Previously, taxpayers could be fined up to HUF 2 million per record for breaching the obligation to prepare or keep transfer pricing documentation for related companies, and up to HUF 4 million for repeated breaches, but these fine items have increased to HUF 4 million and HUF 10 million respectively.

 Date of entry into force: on 31st day after announcement, 27 Aug 2022

 (13) Act LXVII of 2008. 6.§ (2) b) (14) Act CL of 2017. 175.§ (1), 180.§ (1)

 (15) Act CL of 2017. 230.§ (1)

## II. CHANGES AFFECTING THE EXTRA PROFIT TAX

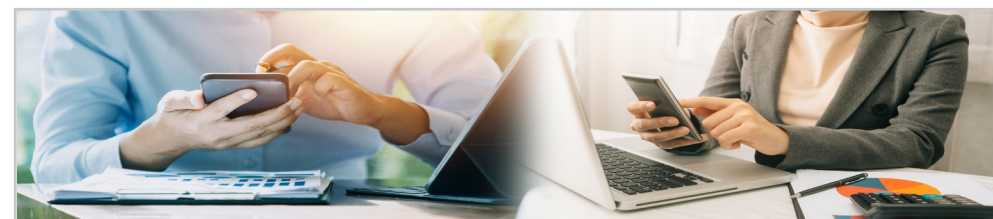


The date of entry into force for all changes reviewed in this chapter: 19 Jul 2022

### 1) Special tax on credit institutions and financial enterprises <sup>(16)</sup>

The basis of the special tax has changed: the following items are excluded from the net sales revenue of the taxable amount under the *Act on Local Taxes*:

- The book value of the asset repossessed during the lease term or at the end of the lease term and subsequently sold (excluding the amount recognised as the purchase value of the asset acquired under the finance lease). According to *Section 52.22. b) of the Act on Local Taxes (Htv.)*, the net sales revenue of credit institutions and financial enterprises includes the acquisition value of assets leased out under finance leases as a deduction from the net sales revenue. Since the net sales revenue under the Htv. is to be used as the basis for determining the special tax, the clarification in brackets that the purchase value of the asset leased under a finance lease is still included in the net sales revenue is necessary. It is important to note that the tax base cannot be reduced in respect of the cost of the asset, so this amount cannot be included as the cost of goods sold. If, however, the taxpayer repossesses the asset during the term or at the end of the term and then sells it, the resulting cost of goods sold) is not part of the net sales revenue (but can be taken into account as a deduction from the basis of assessment for local tax).
- In the case of an entrepreneur preparing its financial statements in accordance with IFRS, income from the sale of goods or the provision of services not generated in the ordinary course of business, as defined in *Section 40/D (2) f) of the Htv.*  
The aim of the amendment is to ensure that taxpayers only have to pay the special tax on sales revenues from activities related to their usual business, sales revenue not included into their usual business activities is being exempt from the tax.



 (16) Government Decree 197/2022 (VI.4.) 1.§ (2)

## 2) Obligation of investment firms and credit institutions to pay transaction duties <sup>(17)</sup>

### a) The scope of taxable persons is extended

As a result of the amendment, the obligation to pay the duty will be extended to a person providing investment services as a cross-border service, just as it is applicable for the financial transaction duty.

The person providing such a service must register with the tax authority by 1 September 2022 if it becomes subject to the transaction duty between 1 August and 31 August 2022. If the service provider becomes subject to the duty after 31 August, it must register with the tax authority by the 1st day of the month following the month in which he becomes subject to the liability.

### b) Exemption from duty

Pursuant to *Section 6 (1) i) of Act CXVI of 2012 on Financial Transaction Duty*, transfers from a payment account of an individual (except from a sole entrepreneur account of an individual) are exempt from financial transaction tax if the amount per transfer is below HUF 20,000.

The amending decree extends this exemption to securities transactions by exempting the payment of transaction duty where the purchase of a financial asset is for the benefit of an individual and the purchase price per asset does not exceed HUF 20,000. If the purchase is made for the benefit of an individual acting in a sole entrepreneur capacity, the exemption does not apply.

## 3) Additional insurance tax <sup>(18)</sup>

According to the previously issued decree, until 30 November 2022, an additional tax advance shall be paid based on the insurance premiums settled between 1 July 2021 and 30 June 2022, but the additional tax liability is to be determined on the basis of a half-year period, between 1 July 2022 and 31 December 2022, and leaving this unchanged could have resulted in a large overpayment of the advance. To avoid this, an amendment has been introduced to calculate the additional advance tax at half the rate of the tax assessed for the period 1 July 2022 to 31 December 2022.

<sup>(17)</sup> Government Decree 197/2022 4.§ <sup>(18)</sup> Government Decree 197/2022 16.§ (5) a)

## III. ARRIVED AFTER CLOSING...

### 1) VAT of new residential properties <sup>(19)</sup>

The current year expiring reduced VAT rate of 5% applicable to the sale of new residential properties has been extended until 31 December 2024 (*Act on VAT, Appendix 3: rows 50-51*).

### 2) Special tax for the energy sector <sup>(20)</sup>

Effective from 1 August 2022 the extra profit tax, which mainly affects the Hungarian Oil Company (MOL) rises from 25% to 40%.

<sup>(19)</sup> Government Decree 267/2022 1.§ & 2.§ <sup>(20)</sup> Government Decree 197/2022 2.§ (5); 27.§ (5)

