

Definition of Controlled foreign company (CFC) under Act on CIT

‘controlled foreign company’ shall mean:

I.

- foreign persons and nonresident entities whose head office is located abroad (hereinafter referred to as “nonresident company”),
- in which there is a beneficial owner who is considered a resident according to the Personal Income Tax Act concerning the majority of the nonresident company’s tax year (hereinafter referred to as “share-holder”),
- as well as the nonresident company whose revenues for the tax year originate from Hungary for the most part, in either case if the quotient of the tax amount paid (payable) by the nonresident company for the tax year - less any tax refund –

and

- the tax base [in the case of group taxation arrangement the amount of tax paid (payable) at group level, less any tax refund, and the tax base] is less than 10 per cent
- or**
- the nonresident company did not pay any tax equivalent to corporate tax on account of its tax base being zero or negative, even though it has made a profit.

II. The above provision shall not apply:

- if the nonresident company in question is established **or** is a resident of a Member State of the European Union, a Member State of the OECD,
- or**
- a State with which Hungary has an agreement on double taxation and in which state the said nonresident company maintains real economic presence, where:¹

*a)*² ‘real economic presence’ means when a nonresident company is engaged in gainful activities in another state - together with its affiliates established in that state, where applicable -, such as in manufacturing, processing, agricultural, service, investment and trading activities, using its own equipment and own workforce, where their revenues from such activities represent at least 50 per cent of all revenues;

b) investing activities are the acquisition, holding and disposal of long-term investments in equity securities and debt securities, as well as the investments made by and the activities of funds, companies and other bodies operating in any State under the regulations of that State pertaining to securities and investment services, authorized by

¹ Amended: by point 3 Section 43 of Act CLVI of 2011. In force: as of 1. 01. 2012.

² Amended: by point 2 paragraph (1) Section 46 of Act CLVI of 2011. In force: as of 1. 01. 2012.



the competent authorities exercising supervision of financial services and investment services in that State, furthermore, the investments made by and the activities of funds, companies and other bodies managed by a professional fund manager authorized by the competent authorities of a State, or established in that State;

*c)*³ if the balance sheet total and the tax base is zero or negative, the amount of the tax equivalent to corporate tax according to the laws of the foreign state (or if the foreign state applies a tax rate corresponding to several corporate taxes depending on the amount of the tax base, the lowest rate) shall reach 10 per cent;

d) the nonresident company's tax year shall be understood as the last tax year ending on or by the last day of the share-holder's tax year;

e) these provisions shall apply to any fixed establishment of the nonresident company located in a state other than where the said company is established or in which it is a resident;

*f)*⁴ for the purposes of this provision, beneficial owner shall mean a private individual who controls - directly or indirectly - at least ten per cent of the voting rights or the capital of the nonresident company, or has a dominant influence by definition of the Civil Code of Hungary (hereinafter referred to as "Civil Code");

g) any nonresident company in which a person that is listed on a recognized exchange for a period of not less than five years effective on the first day of the tax year, or its affiliated company holds a share of at least 25 per cent on each day of the tax year shall not be recognized as a controlled foreign company.

*h)*⁵ the burden of proof to verify what is contained in this provision - except where beneficial ownership under Paragraph *f)* exists indirectly - lies with the taxpayer.

³ Established: by paragraph (1) Section 29 of Act CLXXVIII of 2012. In force: as of 1. 01. 2013.

⁴ Amended: by point 3 Section 43 of Act CLVI of 2011. In force: as of 1. 01. 2012.

⁵ Established: by paragraph (2) Section 29 of Act CLXXVIII of 2012. In force: as of 1. 01. 2013.