

§ 54³ “Income tax on profits of foreign controlled companies” of the Income Tax Act

According to **subsection 1 of § 54³ of the Income Tax Act**, the portion of profits of a foreign controlled company

- ✓ resulting from the use of such assets and the assumption of risks associated with key employees of the controlling company and
- ✓ attributable to ostensible transactions the main purpose of which was to obtain a tax advantage

shall be attributed to the resident company and taxed as profits.

The profits of a foreign controlled company attributable to a resident company are calculated in accordance with the market value principle.

A transaction or a chain of transactions shall be deemed to be ostensible if the relevant entity or permanent establishment did not have the assets from which it receives all or part of its income, and it would not have assumed the corresponding risks if it was not controlled by the company where the function is executed related to the assets and key employees related to the risks, which is crucial upon earning the income of the controlled company. (**Subsection 2 of § 54³ of the Income Tax Act**)

WHAT ARE CONSIDERED AS FOREIGN CONTROLLED COMPANIES

The following are considered as foreign controlled companies:

1. an entity in which a resident company, alone or together with its affiliated companies, has a direct or indirect shareholding of more than 50 per cent of voting rights or holds more than 50 per cent of the capital directly or indirectly or is entitled to more than 50 per cent of the profits of the entity concerned;
2. permanent establishment. (**Subsection 3 of § 54³ of the Income Tax Act**)

Subsection 1 shall not apply to a resident company the profits of the controlled company of which for the previous financial year do not exceed 750 000 euros and whose other operating income, profits from subsidiaries, related companies and financial investments, interest income and other financial income do not exceed 75 000 euros in the same period.

DECLARATION AND PAYMENT OF INCOME TAX

Income tax on the surplus borrowing cost (§ 54³ of the Income Tax Act) is subject to declaration in Annex 7 of the tax declaration form TSD with the code “7016”.

The TSD declaration is submitted and the tax liability is paid by the 10th day of the month following the taxable period.

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