DEBT PUSH DOWN NO LONGER AVAILABLE AS A TAX EFFICIENCY UNDER CIT ACT AS OF 1 JAN 2018

The tax treatment of certain corporate restructurings will change as of 1 January 2018 with entry into force of regulations amending the CIT Act.

The changes are designed to deny tax efficiencies currently available thanks to certain restructuring schemes identified by the Finance Ministry to be used for tax streamlining.

One of the changes (Article 16(1)(13c) CIT Act) is intended to prevent the use of debt push down for tax purposes.

In a nutshell, debt push down is where shares in a company are purchased by a special purpose entity that incurs debt for the purpose and then is merged with the company.

As a result, the operating income of the company is reduced to account for interest on debt that was actually incurred to purchase its "own shares".

As of next year, such interest will no longer be deductible for tax purposes:

"with respect to borrowing incurred to purchase any shares in the company, borrowing costs within the meaning of Article 15c(12) [shall not be deductible] – *to the extent they would otherwise be deductible from such taxable base which includes revenue from continuing business operations of the company, in particular in connection with a merger, a contribution of non-cash assets, a change of legal status or the creation of a tax group."*

With no interim or provisional regulations in the bill, it seems the lawmakers want to make sure the new law catches also interest on borrowings from before 1 Jan 2018.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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