

## INDIRECT FISCAL INCENTIVES FOR R&D IN HUNGARY<sup>1</sup>

### I. Introduction

“2010 must mark a new beginning.” has been given by José Manuel Barroso as the president of the European Commission in the preface of the document of the Strategy of EUROPE 2020. Reaching the prosperous aim of smart, sustainable and inclusive growth of the economy of the EU, the Innovation Union is named as one of the five flagship initiatives of this action plan.<sup>2</sup>

The Strategy of EUROPE 2020 exposed structural weaknesses and found out that the lower level of investment in R&D and innovation has a causal effect on economic (smart) growth.<sup>3</sup> Recognising the importance of R&D activities and innovation, the EU targeted to keep the level of investment in R&D of 3 % of GDP and increase the role of the business sector in this field.<sup>4</sup>

Why is it so important to keep the pace up with the other economic centres of the world economy? The economists agree that technological development, which can be engaged by the results of the R&D activities, is essential to assure health and sustainable growth.<sup>5</sup> The problem is that most of the R&D expenditures can be qualified as so-called non-recoverable costs, which are not got back if the economic operator decides to leave the market<sup>6</sup>, while the yield of the outputs of the R&D activities depends on the strength of the monopoly of the given knowledge.<sup>7</sup> Despite sharing knowledge coming from the production of the R&D activities with other economic operators does not reduce the access to the knowledge of that one who is initially has been in possession of it, it is easy to realise that the transfer of this kind of experience without any compensation makes R&D investments much less desirable for the market. Given types of this knowledge can be more or less protected by

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<sup>2</sup> Communication from the Commission (COM(2010) 2020 final) – EUROPE 2020: A strategy for smart, sustainable and inclusive growth. Preface p1.

<sup>3</sup> EUROPE 2020 p.5.

<sup>4</sup> EUROPE 2020 p.12.

<sup>5</sup> DECHEZLEPRÊTRE, Antoine – EINIÖ, Elias – MARTIN, Ralf – NGUYEN, Kieu-Trang – REENEN, John van: *Do tax incentives for Research Increase Firm Innovation?* National Bureau of Economic Research (NBER) Working Paper No. 22405. Cambridge, USA. 2016. p. 1. <https://ssrn.com/abstract=2810915> (07.04.2018)

<sup>6</sup> STIGLITZ, Joseph E.: *A kormányzati szektor gazdaságtana*. Budapest, KJK-KERSZÖV Jogi és Üzleti Kiadó Kft, 2000. p. 211

<sup>7</sup> STIGLITZ p. 211

the legal framework of patents, but other kinds of it are not able to be preserved by law for the initial economic operators, which has invested in R&D.<sup>8</sup>

In a nutshell, that is the reason why the governments provide public subsidies, i.e. direct and indirect fiscal incentives for the economic operators from the central budget to compensate the non-recoverable expenses of R&D activities to enhance the technological development and economic growth.

## II. Objectives and Methodology

The objective of this study is to overview the scope of the indirect financial incentives of R&D activities in Hungary, especially the tax base deductions of the corporate tax and the local business tax. We attempt to highlight the effort taken by the Hungarian fiscal policymakers to encourage the economic operators to invest in R&D.

Modern states usually motivate economic operators to invest in R&D sector in two ways, commonly as direct and indirect compensations coming from the budget. Mostly, an investment incentive from the budget might be qualified as a direct incentive *if it is designed with a particular aim of influencing the private investment and it is conditional on new investment taking place*. Indirect incentives may be defined by *exclusion as all fiscal measures which have not the specific purpose of influencing private investment, but which may do so*.<sup>9</sup>

The topic of our paper is not to cover the examination of the handling of R&D expenditures and investment in the field of public sectors. Our particular aim is to deal with the R&D incentives of the corporate taxation of the Hungarian regime and the common consolidated corporate tax base.

As Hungary is a member state of the European Union, this latest goal is not a marginal issue to examine the future possibilities and the dividing of the tax base between EU states and of course, the allocation of R&D tax subsidies.

As secondary research, in our paper, we endeavour to aggregate the existing rules of the Hungarian tax law and highlight the main problems in practices. We assemble the most important case law in Hungary and conclude the answers on particular dogmatic questions which are fundamentally shaping the system of R&D incentives.

## III. The role of the government in the viewpoint of R&D activities

After the accession to European Union, Hungary shows a significant increase of the tax incentives to support of business enterprises on R&D activities in addition to direct support measures. As it is mentioned above, the non-recoverable costs shall be compensated to encourage the business sector to invest and allocate funds to R&D activities as the basis of

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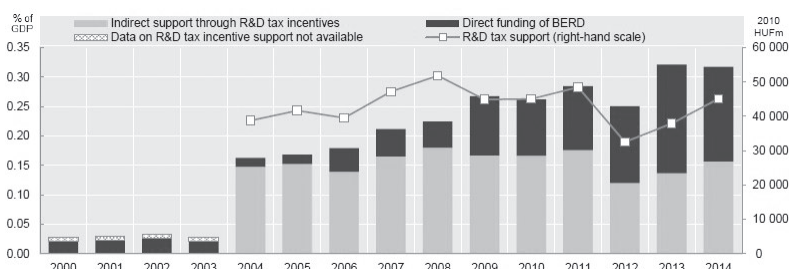
<sup>8</sup> See the series of the legal dispute between the two technologic giant Apple Inc. and Samsung, which is cited as “smartphone patent wars”.

<sup>9</sup> BRECEWELL-MILNES, Barry – HUISKAMP, J.C.L.: *Investment Incentives. A comparative analysis of the system in the EEC, the USA and Sweden*. Springer-Sciece+Business Media, B.V. The Netherlands, 1977. p. 21.

innovation. The vast majority of the studies dealing with the effect of R&D tax credits on investments in R&D concludes that tax credit can spur the expenditures of the R&D sector.<sup>10</sup>

The result of the impact of the wide-spread tax incentives can be observed in the following figure of the column diagram by the scale of direct funding of business and tax incentives for R&D.

Figure 1.  
Direct funding of business R&D and tax incentives for R&D, Hungary,  
2000-14 As a percentage of GDP, 2010 prices (right-hand scale)



Source: OECD, R&D tax Incentive Indicators, <http://oe.cd/rtdtax> (05.05.2018.)

Also, available at <https://www1.oecd.org/sti/RDTax%20Country%20Profiles%20-%20ISL.pdf> (05.05.2018)

However, the increasing volume of direct and indirect incentives in the field of R&D does not mean significant expanding volume and higher quantity of the performance and effectiveness of R&D sector, the number of application for the various protection of intellectual property (IP) right might show useful information in this field. According to the Hungarian Central Statistical Office database, the number of the valid patent application filed to the Hungarian Intellectual Property Office shows an impressive expansion (by itself) between 2010 and 2018 from 13.853 to 23.782.<sup>11</sup>

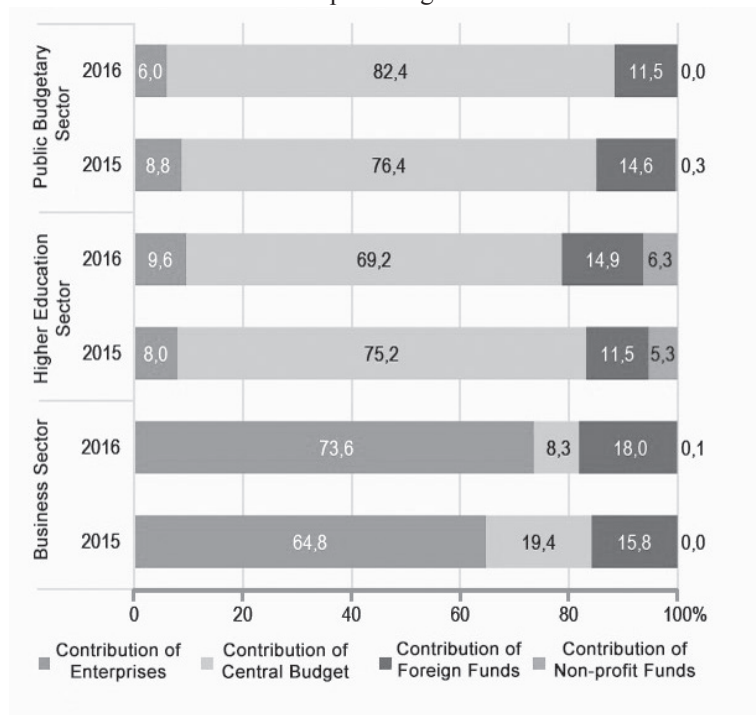
Observing the allocation of the source of R&D activities, the business sector had more and more essential role of financing R&D sector overall. For instance, in 2016, the support of enterprises exceeded 241 billion HUF and according to that the portion of business sector raised from 49,7 % to 56,4 %.<sup>12</sup> In the meantime, the contribution of the budgetary funds in the financing of R&D activities in the business sector has been diminished by 11,1 percentage points from 19,4 % to 8,3 %.

<sup>10</sup> STRAARHOF, Bas [et. al.]: *A Study on R&D Tax Incentives*. Hague, CPB Netherlands Bureau for Economic Policy Analysis, 2014. p. 20. [https://ec.europa.eu/futurium/en/system/files/ged/28-taxud-study\\_on\\_rnd\\_tax\\_incentives\\_-\\_2014.pdf](https://ec.europa.eu/futurium/en/system/files/ged/28-taxud-study_on_rnd_tax_incentives_-_2014.pdf) (09.04.2018.).

<sup>11</sup> Hereby, we emphasize that this number of patent cover all the successful and valid application for protection of patent as a positive result of the R&D activities of the public and the business sector or higher education. Notwithstanding this data, it must be noticed that the number of valid patents was 10.385 in 2003.

<sup>12</sup> *Kutatás-Fejlesztés, 2016. Statisztikai Tükör*. Budapest, Központi Statisztikai Hivatal, 2017. p. 1. <http://www.ksh.hu/docs/hun/xftp/idoszaki/tudkut/tudkut16.pdf> (05.05.2018.)

Figure 2.  
The Allocation of the Funds of the R&D Activities by Sectors, as a percentage

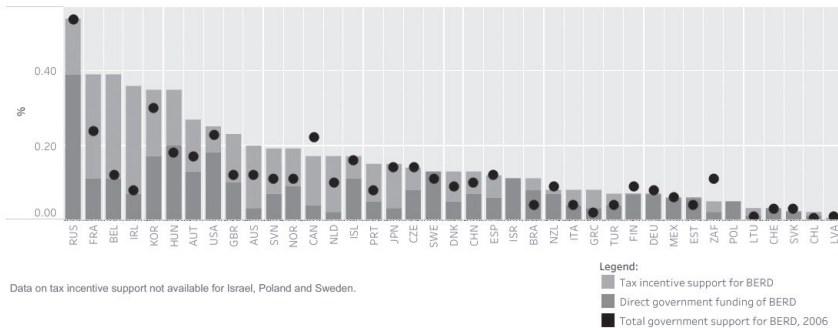


Source: Kutatás-Fejlesztés, 2016. Statisztikai Tükör. Központi Statisztikai Hivatal, Budapest, 2017. p. 1. <http://www.ksh.hu/docs/hun/xftp/idoszaki/tudkut/tudkut16.pdf>; translated from Hungarian language and edited by author (05.05.2018.)

As a result of the changing Hungarian tax policy in the field of R&D incentives and offering more or less wide-spread tax allowances on R&D costs (especially on wages) and a tax credit on investments, we can see impressive improvement on financial assistance coming from the central budget to this sector. Notwithstanding the significant outcome of tax policy; we feel a need to underline that our paper is not aimed to study the effectiveness of the appropriate utilisation of this kind of budgetary support.

It should also be noted in this respect that Hungary ranked on the fifth place among the OECD countries analysing the direct and indirect support of central budget as a percentage of the GDP in 2015 according to the following figure.

Figure 3.  
Direct government funding and tax support for business R&D, 2015 a percentage of GDP



Source: OECD, R&D Tax Incentive Indicators, <http://oe.cd.rdtx> (05.05.2018.)

Also, available at <https://www1.oecd.org/sti/RDTax%20Country%20Profiles%20-%20ISL.pdf> (05.05.2018)

The system of indirect R&D incentives in Hungary can be categorised as tax allowances reducing the tax base, tax credits and tax benefits on the linked wages. In Hungarian tax regime tax allowance cutting the tax base is provided on corporate tax, local business tax, and innovation contribution, while in the meantime the corporate tax credit is reachable after 100 million HUF present value based on R&D investment.

If an enterprise after reducing the corporate tax base has a negative corporate tax base, the social contribution tax after the wages of the R&D staff can be deducted. Moreover, without the criteria of the negative calculated tax base, the research organisation operated by a business enterprise in case of employing a person in the possession of PhD decree or being PhD candidate is entitled to cut its tax base specific benefits [tax benefits after researcher employers].

Besides this kind of “front-end” tax benefits, it is remarkable that the “patent box” is provided after the income of the usufruct of the intellectual property as an outcome of the R&D activities of enterprises as “back-end” tax benefits.

#### IV. The Determination of the R&D content of a certain project

The very first of all, the Fundamental Law of Hungary should be cited as *Hungary shall protect the freedom of research and the State shall not be entitled to decide on questions of scientific fact* when we try to determine the R&D content of a specific project. Moreover, *only scientists shall be entitled to evaluate scientific research*.<sup>13</sup> The same statement was found in the former Constitution of Hungary<sup>14</sup> before 2012.

<sup>13</sup> Section (1) – (2) Article X Fundamental Law of Hungary (25th April 2011)

<sup>14</sup> Article 70/E Act XX of 1949 on the Constitution of the Republic of Hungary

Correspondingly, the question is given: who is entitled to determine the R&D content of an individual project of an enterprise, which is the object of the tax benefit? Is it the enterprise by itself? Is it the tax authority? Is it the State, at all or a body of scientists?

The remarkable portion of the legal disputes related to R&D tax benefits was in connection with the R&D content of the projects. After 2012, the regulation of the Hungarian Tax Law offer a possibility to avoid this kind of legal disputes as the enterprise with due care, and due diligence can file a form to the Hungarian Intellectual Property Office, to determine whether a specific project is entitled to tax benefits or not.<sup>15</sup> HIPO as a governmental body is authorised to settle a decision on critical aspects of tax allowance and define whether the R&D activities will be carried out within the taxpayer's operation or not.<sup>16</sup>

The ruling of the HIPO is strictly about indirect tax allowances, not to direct governmental funding, as the R&D Act declares that the decision *issued as part of this certification procedure may be used if it is stipulated so by the fund provider in the call for tender within the framework of the research and development funding system.*<sup>17</sup> Here, it might be mentioned that the competent authority is the National Research, Development and Innovation Office (NRDIO).<sup>18</sup>

The other side of the coin, if the ruling of the HIPO is not available during the tax audit measures, the National Tax and Customs Administration (NTCA), as the competent tax authority about the revenues of the central budget, and the local tax authorities, as the competent tax authority concerning the revenues of budget of the local government, are entitled and obliged to obtain the binding expert report from HIPO in a tax audit procedure connected to R&D activities.<sup>19</sup>

Questions arise if an authority has exclusive rights to issue rulings and expert reports and by this way, it has a vital role in enjoying the possibility of the tax benefits by the economic operators. Concerning the subject of the right to an effective and adequate remedy, we may find that in the Hungarian Law, only the judicial remedy is open against the legal acts of the HIPO.

The right to appeal against the ruling of the HIPO based on the application of the given enterprise to determine the R&D content of its activities is excluded, but the action against the decision can be brought before the Court of (Budapest) Capital Region within the frame of a non-contentious proceeding.<sup>20</sup>

As it is mentioned above, the tax authority is obliged to acquire the report of HIPO in the given tax audit measure, if any doubt arises in connection with R&D content of the specific business activity. This practice also means that the subject matter of this kind of

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<sup>15</sup> Section 2 Article 58 Act CLXVI of 2011 on Amending of the Provisions of the certain Acts Underlying the Central Budget 2012 of Hungary (Social Contribution Tax Act / SCT Act)

<sup>16</sup> Section 1 Article 36 R&D Act

<sup>17</sup> Section 3 Article 36 R&D Act

<sup>18</sup> Section 1 Article 10 R&D Act

<sup>19</sup> Section 5 Article 38 R&D Act; Section 1 Article 101 TA&RTA

<sup>20</sup> However, the administrative procedure of the HIPO fall under the scope of general rules of administrative procedure, before the Court of Justice, the judicial procedure is not based on the regulation of the Code of the Administrative Litigation but the Code of Civil Procedure and the Act on the Rules of Civil Non-contentious Procedures according to Section 5 Article 40 R&D Act.

expert report is binding before NTCA or local tax authorities. Thus, the economic operator, who call into question the findings of the expert report of the HIPO has no legal possibility to challenge it in this state of the tax administrative procedure.

Moreover, even the Court of Justice is deprived of the right to review to the essence of the report according to the Hungarian case-law. The only way in the procedural law to find a remedy against the conclusions of the HIPO is to file a motion to acquire the opinion of another expert witness (usually NRDIO<sup>21</sup>) before the competent Administrative and Labour Court.<sup>22</sup>

Despite the unique position of the HIPO in the system of R&D indirect incentives, it ensures a stable legal environment to determine R&D content of given business activity, especially for tax authorities but it might cause a collision between the national law and the law of the European Union. In so far as the R&D content of given project is found in the other Member State of the EU but the HIPO (nor the NRDIO) refuses to recognise it, the principle of freedom of services<sup>23</sup> (and the related principle of effectiveness) may be infringed by abovementioned Hungarian legal practice.

Before going into details in the field of R&D cost, we shall define the basic terms in relation to R&D activities.

The legal terminology of the basic definition of the R&D is highly harmonised with the Frascati Manual<sup>24</sup> as the Act on Corporate Tax and Dividend Tax (CTDT) cited explicitly *that it contains regulations adopted with regard to the following documents in conformity with the Convention on the Organization for Economic Cooperation and Development (OECD), especially with the Frascati Manual – Proposed Standard Practice for Surveys on Research and Experimental Development.*<sup>25</sup>

However, the harmonisation statement in the CTDT was effective until 2013, the harmonised regulation with Frascati Manual 2002 has not been modified, as the relevant rules of R&D Act to which the CTDT referred, cover the definition of Frascati Manual. The link between CTDT and R&D Act is the term of ‘R&D activities carried out within the taxpayer’s operations’ because the R&D Act gives us the definition of R&D. Pursuant to the R&D Act, *the research and development includes basic research, applied research and experimental development.*<sup>26</sup>

The approach of the Frascati Manual is a little different from the R&D Act mainly in a view to give a general meaning of R&D as to the follows: *research and experimental*

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<sup>21</sup> It is easy to see that the relation between the competent authority of the direct funding of the R&D projects, i.e. NRDIO, and the HIPO might be qualified to be sensitive.

<sup>22</sup> KGD 2018. 44

<sup>23</sup> Article 56 The Treaty of The Functioning of The European Union (TFEU)

<sup>24</sup> “*In June 1963, the OECD met with national experts on research and development (R&D) statistics at the Villa Falcioni in Frascati, Italy. The result was the first official version of the Proposed Standard Practice for Surveys of Research and Development, better known as the Frascati Manual.*” – we can read these words in the Foreword of the Frascati Manuals. The Manuals, which aimed to set forth the methodology for collecting statistics about R&D activities, is named after the town of Frascati next to Rome, where the experts of OECD and NESTI Group (National Experts on Science and Technology Indicators) met in 1963. After the reviews of the Manuals, the 7<sup>th</sup> edition came out in 2015.

<sup>25</sup> Subpoint c) Section 2 Article 31 CTDT (Effective between 01/01/2010 and 01/01/2012)

<sup>26</sup> Subpoint 11 Section 3 R&D Act



*development (R&D) comprise creative and systematic work undertaken in order to increase the stock of knowledge – including knowledge of humankind, culture and society – and to devise new applications of available knowledge.*<sup>27</sup>

Moreover, for an activity to be an R&D activity must satisfy five criteria according to Frascati Manual, which is followed by the Hungarian practice<sup>28</sup>, as it must be:

- novel,
- creative,
- uncertain,
- systematic,
- transferable and/or reproducible.<sup>29</sup>

The Frascati Manual breakdown R&D and distinguish three types of R&D activities, namely ‘basic research’, ‘applied research’ and ‘experimental development’.

In the view of Frascati Manual, *‘basic research’ is experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any particular application or use in view.*<sup>30</sup> The first element of the R&D definition in the R&D ACT is ‘basic research’ as well. *Basic research means experimental or theoretical work aimed at new discoveries, carried out with the primary aim of obtaining new knowledge necessary for understanding phenomena, experiences, and observations, without envisaging its practical use or application.*<sup>31</sup>

When we observe the characteristic of R&D, it shall be highlighted that the ‘basic research’ has a unique nature in the sense that the *performer (researcher) may not know about potential applications when doing the research or responding to survey questionnaires. Even more, the results of ‘basic research’ are not generally sold but are usually published in scientific journals or circulated to interested colleagues.*<sup>32</sup> Thus, an activity can be considered as R&D activity even there is no particular application or use in the view for the national economy as well.

*‘Applied research’ is original investigation undertaken in order to acquire new knowledge. It is, however, directed primarily towards a specific, practical aim or objective*

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<sup>27</sup> 2.5 Frascati Manual

<sup>28</sup> It should be noted that neither the R&D Act, nor the CTDT refer to the Frascati Manuals expressis verbis. Only the Manual on Methodological Instruments For Certification Procedures of the HIPO (HIPO Manual), which is published on the official website of the HIPO, cited Frascati Manuals. It is also notable that the Manual refers to the Guidelines on the Meaning of Research and Development for Tax Purposes of the Department for Business, Innovation&Skills in the UK. The legal force of the Manual can be questionable, because the R&D Act authorize the HIPO to determine and publish the certification procedure of the group of projects but not for the R&D criterias.

<sup>29</sup> OECD (2015), Frascati Manual 2015: Guidelines for Collecting and Reporting Data on Research and Experimental Development, The Measurement of Scientific, Technological and Innovation Activities, OECD Publishing, Paris, 2015. p. 28.; p. 45. <http://dx.doi.org/10.1787/9789264239012-en> (01.05.2018); 2.7 Frascati Manual

<sup>30</sup> 2.25 Frascati Manual

<sup>31</sup> Point 1 Section 3 R&D Act

<sup>32</sup> 2.26 Frascati Manual



according to the definition in Frascati Manual.<sup>33</sup> In practice, ‘applied research’ is based on ‘basic research’ and aimed to solve specific questions. ‘Applied research’ is often to extend in a certain direction and explore the likely outcome of the ‘basic research’. As Frascati Manual notes, ‘*applied research*’ gives operational form to ideas.<sup>34</sup> ‘Applied research’ is referred in the R&D Act as *planned research or targeted study aimed at obtaining new knowledge or expertise with the aim of developing new products, processes, technologies or services or contributing to the significant development of existing products, processes or services*.<sup>35</sup>

We can see that the last phrase of the definition of ‘applied research’ under the R&D Act creates a ‘thin ice’ as bringing the term *contributing to the significant development of existing products, processes or services* in the legal instrument of R&D definition. Bear in mind that all types of R&D activities shall meet the abovementioned five criteria (novel, creative, uncertain, systematic, transferable and/or reproducible), thus the sake for clarity of expression of ‘*contributing to the significant development*’ can be questionable at least.

Here it is only indicated that real product development shall not be qualified as R&D activity, because within the subject of uncertainty, the solution to a specific problem shall be not readily apparent to someone familiar with the underlying stock of shared knowledge and techniques for the area concerned. The question is already about (Business Enterprises Research and Development) BERD that who is entitled to determine the level of development, which satisfies the criteria of ‘significant development’ in the system of R&D tax benefits in CTD. If a governmental body is authorised to rule in this issue, the freedom of speech and the constitutional principle of that *only scientists shall be entitled to evaluate scientific research* might be breached.

Observing the definition of ‘experimental development’ in Frascati Manual, we can find that the ‘product development’, as the overall process, aims to bring a new product (good or service) to the market<sup>36</sup>, while ‘*experimental development*’ is just one possible stage in the product development process: *that stage when generic knowledge is actually tested for the specific applications needed to bring such a process to a successful end*.<sup>37</sup>

‘*Experimental development*’ is systematic work, drawing on knowledge gained from research and practical experience and producing additional knowledge, which is directed to producing new products or processes or to improving existing products or processes<sup>38</sup> says the Frascati Manual.

When the term of ‘experimental development’ in the R&D Act is examined, we may face similar problems. Pursuant to this definition, ‘*experimental development*’ means *obtaining, aggregating, sharing, applying and utilizing existing scientific, technological, business and other knowledge and expertise with the aim of creating or designing new, modified or improved products, processes or services*<sup>39</sup>. It must be noted that the policymakers set

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<sup>33</sup> 2.29 Frascati Manual

<sup>34</sup> 2.31. Frascati Manual

<sup>35</sup> Point 2 Section 3 R&D Act

<sup>36</sup> 2.34. Frascati Manual

<sup>37</sup> 2.34. Frascati Manual

<sup>38</sup> 2.32. Frascati Manual

<sup>39</sup> Point 7 Section 3 R&D Act

up a non-taxable, detailed list of possible cases of ‘experimental development’<sup>40</sup> and, in a negative approach, exclude the simple procedures, which can result in a developed or improved products by regular, periodical or routine changes<sup>41</sup> to contribute the interpretation of the definition.

Nevertheless, the given activity can be considered R&D activity, borne in mind that the (R&D) activity shall fall within the scope of the business interest of the taxpayer as well. The corporate tax base shall be increased with the direct costs of research and development activities, if it is not connected to the taxpayer’s business operations or gainful activity.<sup>42</sup>

## V. ‘Super deduction’ by Claiming the Direct Costs of R&D activities under CTDT

After we take a short look at the subject of R&D activity, we need to get back to the limits of super deduction of CTDT. Previously, we shall notice that the system of the indirect fiscal incentives is based on the regulation of corporate taxation. Besides the corporate tax, the key pillars of the R&D tax benefits are the tax allowances of the local business tax and the innovation contribution. The overlapping scheme builds on the terms of the CTDT, while the Act on Local Taxes (LTA) and the R&D Act, which are the relevant acts on the local business tax and innovation contribution, cite the regulation of the CTDT. We can find parallel regulation in the Act on Personal Income Tax (PIT) in case of the R&D project of private entrepreneurs.<sup>43</sup> That is the reason why we focus on the terms of the CTDT to add remarks and refer the relevant rules of LTA and R&D Act.

The very first of all, it must be observed that not all kind of cost can be measured as tax allowance in the system of R&D incentives. Indeed, the CTDT provides tax base reduction only after the direct costs of R&D. Moreover, the CTDT gives the approach when uses the phrase of ‘R&D activities carried out within the taxpayer’s operations’, which means that *the R&D activities carried out using the taxpayer’s own assets and workers, at the taxpayer’s risk and benefit, including where R&D activities*

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<sup>40</sup> For the sake of complete citing of the relevant regulation on R&D definition in Hungary, the following list is settled in the second sentence of Point 7 Section 3 R&D Act: *a) activities aimed at the conceptual definition, design and documentation of new products, processes and services; b) activities that include the creation of drafts, design drawings, plans and other forms of documentation not intended for commercial use; c) the making of prototypes not for commercial use; d) the development of commercially usable prototypes and experimental projects if the prototype itself is by necessity the commercial end product as well, and its manufacturing is too costly to be done for demonstration and certification purposes only; e) the experimental manufacturing and testing of products, processes and services, provided that they cannot be used for industrial or commercial purposes, or be modified for such use.*

<sup>41</sup> Pursuing to the last phrase of Point 7 Section 3 R&D Act: *‘experimental development’ shall not include normal, periodical or routine changes carried out with regard to products, production lines, manufacturing processes, existing services or other ongoing operations even if such changes are considered development, or if they result in the improvement of the given product, process, operation or service.*

<sup>42</sup> Point 15 of Part A) of Schedule No. 3 CTDT

<sup>43</sup> Subsection c) Section 6 Article 49/B.

*are carried out by the taxpayer's workers using the taxpayer's own assets on behalf of others.*<sup>44 45</sup>

In order to enhance the business sector to invest in and increase the expenditures of R&D activities, the government, like other EU Member States provides so-called 'super deduction' for R&D direct cost. Super deduction means that the taxpayer is entitled to cut its tax base twice: once when it settles its profit and loss account and deducts the profit; and second when it applies for the entitlement of the R&D tax allowance. It shall also be noted that the 'super deduction' is only available to CTDT and PIT tax base but not to local business tax or innovation contribution.<sup>46</sup>

The frame of the super deduction depends on its own decision of the taxpayers because the CTDT offer two possibilities primarily if the taxpayer carries on experimental development.

Option one is to measure the direct cost of R&D activities and claim them in the tax year in which they are incurred, while option two means the possibility to capitalise these costs and the capitalised value of experimental development (as intellectual property) can be the subject of depreciation. The taxpayer is entitled to claim the direct R&D costs, as tax allowance only in that tax year in which they are incurred.

We should examine two issues in this field of R&D tax allowances, namely the scope of direct R&D costs and the interpretation of the terms of CTDT on 'R&D activities carried out within the taxpayer's operations'.

Observing the scope of the direct cost of R&D activities, the very first issue, which needs to be mentioned that the assets, used directly for R&D purposes can be the subject of depreciation and ordinary depreciation, as defined in the Accounting Act, (including lump-sum depreciation) can be claimed on tangible assets that are used exclusively for basic research, applied research and/or experimental development.<sup>47</sup> It is one of the crucial parts of our theme because protecting the corporate tax base, the general principles of CTDT are that if the taxpayer has deducted the depreciation of such asset from the pre-tax profit according to the Accounting Act, the corporate tax base has to be increased with the amount of deduction claimed on the regime of Accounting Act.<sup>48 49</sup> According to the rules of CTDT and Accounting Act, there is no particular limitation on depreciation of the tangible or intangible assets used for R&D purposes.

As mentioned above, the taxpayer has a right to choose between two options to claim the tax base reduction of the direct cost of 'experimental development'. It needs to be underlined that these two options are mutually exclusive and depend on the taxpayer's accounting policy, which shall be settled before the start of the given R&D activity and the taxpayer has no right to modify its own decision in this issue after that.

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<sup>44</sup> Point 32. Article 4 CTDT

<sup>45</sup> Besides the R&D content of the given business activity, the HIPO also confirms the taxpayer's application that the R&D content is related to the taxpayer's own business operation as well.

<sup>46</sup> Point 25 Article 52 LTA; Section 1 Article 16 R&D Act

<sup>47</sup> Subpoint g) Point 5 Schedule No. 1 CTDT

<sup>48</sup> Subsection b) Section 1 Article 8 CTDT

<sup>49</sup> Hereby, we only note that the CTDT by its own regime provides depreciation allowances for the tangible and intangible assets under which the tax base can be cut to protect the tax base.

First, the taxpayer is entitled to reduce the pre-tax profit by the direct costs of basic research applied research and experimental development in the taxpayer's field of activity – up to the amount of depreciation recognised in the tax year for the depreciation.

According to the Accounting Act, the direct cost assets or services are able to be measured under the accounting policy of the taxpayer. In case of the assets, the Accounting Act allows that the taxpayer can assess the expenditures *which are directly incurred in the course of manufacturing, commissioning, expansion, conversion, transformation or restoration of the original condition of an asset; or are verifiably closely related to manufacture*. Nevertheless, *the production cost of services supplied shall include the expenditures which are directly incurred in the course of supplying the service or are verifiably closely related to supplying the service*. Both the production cost of the assets or the services, the measured expense shall meet another criterion, as it can be accounted for the indices and specifications applying to the asset/service (product).<sup>50</sup>

As we can see, the regulation of the Accounting Act makes it possible to account for almost all expenditures, including the depreciation allowances of the tangible and intangible assets, and, which incurred in connection with the process of the production of the asset or service. It should be borne in mind that the Accounting Act only provides a framework for the determination of R&D direct cost. However, the Accounting Act entitles economic entities to measure purchased services as direct costs of the products; we shall emphasise that the expenses of subcontractor services shall not to be a subject of R&D tax allowance if the Subcontractor is to be considered as CTDT taxpayer as well of.

At that point, we arrive at the other critical aspect of the R&D tax allowances provided by CTDT: 'super deduction' is only eligible related to the given 'R&D activities carried out within the taxpayer's operations.' According to CTDT, 'R&D activities carried out within the taxpayer's operations' *shall mean R&D activities carried out using the taxpayer's own assets and workers, at the taxpayer's risk and benefit, including where R&D activities are carried out by the taxpayer's workers using the taxpayer's own assets on behalf of others, as well as (joint) research and development activities carried out under research and development agreement*.<sup>51</sup>

As mentioned above, the subcontracting expenses shall not be claimed by the taxpayer, in principle, if the subcontractor is obliged to be CTDT payer, itself.<sup>52</sup> Argumentum a contrario, the Subcontractor should not be a CTDT taxpayer, thus the tax allowance becomes reachable for the Contractor. In given cases, the Subcontractor has the right to choose another tax regime for being a taxpayer than CTDT.<sup>53</sup>

Under this regime, the possibility for claiming the allowance of the tax base deduction is always being remained to the Subcontractor who carried out the R&D activities with

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<sup>50</sup> Section 1-2 Article 51 Accounting Act

<sup>51</sup> Point 32 Section 4 CTDT

<sup>52</sup> Avoiding double tax base reduction, Contractor cannot deduct its own tax base, because the CTDT excludes the expenditures of R&D services provided directly or indirectly by a resident taxpayer, a resident's domestic establishment or a private entrepreneur under the PIT according to Subsection b) Section 1 Article 7 CTDT.

<sup>53</sup> In the Hungarian tax system, the given entity is eligible for the fixed-rate tax of low tax-bracket enterprises and taxpayers taxed under the small business tax scheme or it is able to be taxed under the simplified entrepreneurial taxation system.

its own assets and workers, at its own risk and benefit. This opposite viewpoint helps to avoid unjustified multiple tax benefits and make the investigation of the transaction value between affiliated corporations easier.<sup>54</sup>

Enhancing the cooperation between BERD and the institutions of higher education, the tax policymakers assure more benefits for the purchased R&D services acquired by CTD T taxpayer and provided by research institution of the universities / higher educational institute. If the R&D activity performed jointly with an institution of higher education (generally universities), Hungarian Academy of Sciences (HAS), research institution operated as a central budgetary agency (governmental body) or other research institution, the expenditures related to directly R&D activities can be deducted three times, but no more than 50 million HUF per year (around 161 000 EUR) from the tax base of the CTD T payer.<sup>55</sup>

Other research institution shall meet one of the following criteria: it shall be established by either an institution of higher education or the HAS or a research institution operated as a central budgetary agency or jointly, or as any research institution acting in the form of a business association under direct or indirect majority State ownership. The tax allowance is also reachable if the taxpayer concludes R&D agreement with any equivalent organisation established in any Member State of the European Union or any State that is a party to the Agreement on the European Economic Area.

If the amount of the contracting expenses is higher than 50 million HUF per tax year, the amount exceeding this limit can be considered as tax base deductive items and CTD T taxpayer can deduct the tax base twice (once as an expenditure which cuts the profit before taxation and second as a tax allowance after the given direct costs of the R&D activities) in case of the subcontractor is not considered as CTD T taxpayer.<sup>56</sup>

Nevertheless, the regulation of CTD T allows Hungarian taxpayers for acquiring R&D services from abroad providing the possibility of ‘super-deduction’, thus this R&D service suppliers cannot be considered as CTD T taxpayer as well.

In this case, the Hungarian CTD T payer shall possess the declaration of the subcontractor (R&D service provider/supplier) that the delivered service having provided is without the involvement of research and experimental development services provided by a resident taxpayer or by the Hungarian branch of a nonresident entrepreneur, or by a private entrepreneur governed under the Act on Personal Income Tax.

These rules of CTD T make it possible to avoid multiple deductions of the tax base of CTD T in Hungary. However, the subcontractor might enjoy tax allowances on its own, in its resident state.<sup>57</sup>

There is another option in the business sector to claim R&D tax allowance after purchased R&D service. The tax benefit of direct costs of R&D activities can be shifted between

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<sup>54</sup> If a taxpayer acquires R&D services from another entity, the taxpayer shall possess the statement of the R&D service supplier in which it declares of having provided the service without the involvement of research and experimental development services provided by a resident taxpayer or by the Hungarian branch of a nonresident entrepreneur, or by a private entrepreneur governed under the PIT.

<sup>55</sup> The amount of corporate tax based and calculated on the amount of the 50 million HUF shall be considered as de minimis aid according to Section 17 Article 7 CTD T.

<sup>56</sup> Section 17 Article 7 CTD T

<sup>57</sup> Section 18 Article 7 CTD T

affiliated corporations from the subsidiary (Subcontractor) to the parent undertaking (Contractor/taxpayer) based on the research and development agreement (R&D agreement).<sup>58</sup> In this case, naturally, the subsidiary is not entitled to deduct twice its own CTDT tax base with the direct costs of R&D activities. The parent undertaking shall possess the tax declaration on this issue as well to take advantage of ‘super-deduction’. It should not be forgotten that R&D activities being fallen within the taxpayer’s operations includes the research and development activities carried out under research and development agreement.<sup>59</sup>

The specific rules R&D Act, which gives us the definition of R&D agreement, extends the scope to the *paid-for R&D (regarding the product, process or service named in the contract), without any joint exploitation of the results*.<sup>60</sup> Nevertheless, the contracted expenditures of an R&D agreement between CTDT taxpayers shall not be considered as an item of ‘super-deduction’ generally; the affiliated corporations can enjoy the benefit of R&D tax allowance.<sup>61</sup>

Borne in mind that the R&D activities shall fall within the scope of the business interest of the Contractor as well. Avoiding double tax base reduction, the Contractor (taxpayer claiming R&D tax allowance) shall also possess the statement of the Subcontractor (R&D service supplier) in which it declares of having provided the service without the involvement of research and experimental development services offered by a resident taxpayer or by the Hungarian branch of a nonresident entrepreneur, or by a private entrepreneur governed under the PIT.

The R&D tax allowance is eligible for business enterprises not just by claiming the costs of R&D activities in the tax year in which they are incurred if the R&D activity can be qualified as experimental development, as the CTDT provide the same tax benefit after the capitalised value of experimental development.

The Accounting Act allows that the capitalised value of the experimental development may be shown under intangible assets<sup>62</sup>, which also means that the capitalised value of the experimental development, as an intangible asset, can be subject of ordinary depreciation as well.<sup>63</sup>

According to the Accounting Act, the capitalised value of experimental development may include consist of the sums paid to subcontractors as invoiced to achieve the purpose of the experimental development. Thus these expenditures must be bounded because of the abovementioned reasons related to subcontracting expenses.

The tax allowance is eligible for as the capitalised value of experimental development (intellectual property) in the tax year in which depreciation is claimed, up to the amount requested as depreciation.

Dealing with the CTDT tax base reduction of R&D cost, finally, we are to highlight that the R&D tax allowance is strictly limited, so does the NTCA in a resolution as well<sup>64</sup>. The

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<sup>58</sup> Point 14 Section 3 R&D Act and Subsection w) Section 1 Article 7 CTDT

<sup>59</sup> Point 23/e Article 4 CTDT and Point 14 Article 3 R&D Act

<sup>60</sup> Subsection f) of Point 14 Section 3 R&D Act

<sup>61</sup> Subsection w) Subsection 1 Section 7 CTDT and Subsection 21 Section 7 CTDT.

<sup>62</sup> Section 2 Article 25 Accounting Act

<sup>63</sup> Section 1 Article 52 Accounting Act

<sup>64</sup> The Accounting Issue 28/2015.



taxpayer shall not reduce the pre-tax profit from the determined allowance (expenses) for development or compensation (expense) of the activity or with the amount of the allowance requested from the tax authority until the balance sheet date or with the amount of the given allowance in the tax year or if he has an option, the amount of the income accounted for the benefit of the pre-tax profit.<sup>65</sup>

As we mentioned before, the tax base reduction under local business tax is also eligible for the direct costs of basic research, applied research and experimental development claimed for the tax year.<sup>66</sup> As the interpretation provisions of LTA show us, the '*direct costs of basic research, applied research and experimental development*' shall mean a sum to be deducted from the pre-tax profit according to CTDT, with the proviso that such cost may be claimed only once when determining the local business tax base.

Pursuant to the Accounting Act, the production costs of R&D can include the costs of materials, assets, wages, benefits in any kind and the revenues after the salaries as well<sup>67</sup>. The local business tax base can be reduced by the total of the original costs of goods sold and the value of mediated services and the sums paid to subcontractors, or the material costs. Thus, the taxpayer must exercise due diligence to follow the regulation of LTA and avoid a double cut of the tax base and unjustified tax base reduction, for instance subcontracting R&D expenses, according to CTDT. On the other side of the coin, it is notable that the tax base of local business tax can be cut extraordinarily by the costs of wages and related social contribution tax, which connected directly to R&D activities by this way.

In the approach of innovation contribution, we are to measure the expenditures in the same way, as the R&D Act, with the regime of innovation contribution, cites the regulation on the tax base of the local business tax.<sup>68</sup>

Enhancing BERD, the revenues of wages related to R&D activities can be reduced by two ways in the Hungarian tax system. The tax credit after employing a researcher or a developer is eligible for a research organisation operating as a business enterprise if the employed researcher/developer has the possession of a PhD degree or higher scientific qualification or the employed researcher/developer is a doctoral candidate or attending a doctoral program. The scope of the tax credit is limited to the amount of the amount of the social contribution tax calculated after the amount of the wage of the employer, but not higher than 500k HUF in case of the employer with PhD degree and 200k HUF in the other cases (PhD candidates/doctoral students).<sup>69</sup>

According to the CTDT, it must be underlined that the corporate tax base can be cut down to zero by the tax allowance of the R&D activities. If taxpayer shows negative tax after claiming the super deduction of R&D direct costs, the 50 per cent of the negative amount of the tax base can be claimed as social contribution tax benefit. It is more than generous tax benefit, as the tax credit can be requested after the calculated social contribution tax based on the whole staff of the taxpayer, not exclusively after the R&D staff. The additional

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<sup>65</sup> The Taxation Issue 15/2017.

<sup>66</sup> Subpoint b) Section 1 Article 39 LTA

<sup>67</sup> The Accounting Issue 65/2015.

<sup>68</sup> Section 1 Article 16 R&D Act

<sup>69</sup> Section 1–2 Article 462/F. SCT Act



criteria of the tax credit assure to strengthen the cooperation between higher education and business sector or preserve and sustain the researcher/developer jobs at the taxpayer.<sup>70</sup>

Besides the tax benefits of wages, the CTDT also provides a tax credit for investment projects concerning R&D, if valued at 100 million HUF or more at current prices.<sup>71</sup> By this way, the capital costs can be the subject to the tax allowance after the R&D direct costs or tax credit for R&D investment as well.

## VI. R&D Incentives in the Approach of Common Corporate Tax Base

After the Council of the European Union (Council) blocked the 2011 proposal of Common Corporate tax Base (Proposal 2011)<sup>72</sup>, the European Commission (Commission) brushed the dust on it and evoked one of the most critical issues on corporate taxation within the European Union in 2015 as one of the crucial points of its Action Plan.<sup>73</sup>

According to the Action Plan, the Proposal 2015 on Common (Consolidated) Corporate Tax Base (CC(C)TB) aim to offer a holistic solution to profit shifting and the Commission hold it as an *extremely effective tool for meeting the objectives of fairer and more efficient taxation*.<sup>74</sup>

The principles of the new proposal of the CC(C)TB according to the Action Plan are to make the CC(C)TB mandatory and develop a staged approach to implementing the CC(C)TB.

The Proposal 2011 on CCCTB is for an optional solution. Despite Proposal 2011, the new CC(C)TB proposal is to be mandatory for MNO's with a total consolidated group revenue that exceeds EUR 750 000k during the financial year preceding the relevant financial year.<sup>75</sup> On the other hand, the business enterprises can choose CCCTB for corporate taxation instead of the tax regime of their resident state as well. Thus the CCCTB is to be optional for business enterprises, which are not obliged to apply CCCTB.

As the failure of adopting Proposal 2011 showed, implementing such an incredibly useful tool against tax avoidance and profit shifting is require a more careful approach in the world where harmful tax competition between states exists. The Commission recognised that the CCCTB proposal, *being a very ambitious project, would be unlikely to get adopted, in its entirety, without a staged approach*. The Commission advocates a step-by-step approach to CCCTB *suggested that work on consolidation be postponed until agreement is first*

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<sup>70</sup> Section 1–4 Article 462/H. SCT Act

<sup>71</sup> Subsection e) Section 1 Article 22/B CTDT

<sup>72</sup> The idea of the CCCTB aims to consolidate the tax base of the business enterprises established under the laws of a Member State of the European Union or under the law of a third state in respect of its permanent establishment situated in one or more Member State of the European Union. In the approach of the CCCTB, the common consolidated corporate tax base shall be shared, between the related Member States of the European Union by a formula for apportionment based on the factors of sales, labour and assets.

<sup>73</sup> Communication from The Commission to The European Parliament and The Council (COM/2015/0302 final): A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015DC0302> (05.05.2018.)

<sup>74</sup> p. 8. Action Plan

<sup>75</sup> Subsection c) Section 1 Article 2 CCTB Proposal and Subsection c) Section 1 Article 2 CCCTB

secured on a mandatory set of rules for the common base, i.e. the common corporate tax base.<sup>76</sup> The Commission submitted two proposals, i.e. for the Common Corporate Tax Base (CCTB)<sup>77</sup> and the Common Consolidated Tax Base (CCCTB)<sup>78</sup>. After a short introduction to CCCTB, we are to deal with CCTB, as the regime of CCCTB stands on the basis of the CCTB and the rules on the common tax base is relevant to our theme.

Naturally, the rules of CCTB consist of incentives for several reasons, i.e. R&D and Allowance for Growth and Investment (AGI).

The first issues to mention is that the CCTB gives us a definition of R&D comply with Frascati Manual<sup>79</sup> and the term of expenses<sup>80</sup>. The limited ‘super deduction’ of R&D tax incentives is provided to the taxpayer after the costs for R&D, while the rate of the tax allowance depends on the taxpayer’s character.

It is evident that the expenses incurred in the direct business interest of the taxpayer can be the subject of deduction, but only to that extent.<sup>81</sup> The expenses includes *all costs of sales and all expenses, net of deductible value added tax, that the taxpayer incurred with a view to obtaining or securing income, including costs for research and development and costs incurred in raising equity or debt for the purposes of the business.*<sup>82</sup> We can see that the corporate tax base can be cut by R&D cost as a whole in the tax year.

As regards to the ‘super deduction’, the rate of limitation on deduction is 50 per cent of the R&D cost beyond EUR 20000k, however, the Explanatory Memorandum provides that the R&D expenses can be fully expensed in the year incurred.<sup>83</sup> The taxpayer may deduct the tax base only with 25 per cent of the exceeding amount. Interestingly, the cost of movable tangible fixed assets related to R&D are excluded according to the rules of CCTB on R&D ‘super deduction’, however, the referred Explanatory Memorandum, excludes the costs of immovable properties.<sup>84</sup>

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<sup>76</sup> p. 3. Action Plan

<sup>77</sup> Proposal For a Council Directive on a Common Corporate Tax Base (CCTB) (COM(2016) 685 final) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0685> (05.05.2018)

<sup>78</sup> Proposal For a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) (COM(2016) 683 final) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0683> (05.05.2018)

<sup>79</sup> According to Section 11 Article 4 CCTB, *‘research and development’ means experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any particular application or use in view (basic research); original investigation undertaken in order to acquire new knowledge but directed primarily towards a specific, practical aim or objective (applied research); systematic work, drawing on knowledge gained from research and practical experience and producing additional knowledge, which is directed to producing new products or processes or to improving existing products or processes (experimental development).*

<sup>80</sup> According to Section 6 Article 4 CCTB, *‘expenses’ means decreases in net equity of the company during the accounting period in the form of outflows or a reduction in the value of assets or in the form of a recognition or increase in the value of liabilities, other than those relating to monetary or non-monetary distributions to shareholders or equity owners in their capacity as such.*

<sup>81</sup> Section 1 Article 9 CCTB

<sup>82</sup> Section 2 Article 9 CCTB

<sup>83</sup> Section 8 Preambulum CCTB

<sup>84</sup> Section 8 Preambulum CCTB

For the small enterprises, the CCTB offer more generous tax allowance as the tax base reduction after 100 per cent of R&D costs is available up to EUR 20000k. In addition, if a small enterprise like to enjoy this tax benefit, they shall meet the following criteria:

- *it is an unlisted enterprise with fewer than 50 employees and an annual turnover and/or annual balance sheet total that does not exceed EUR 10 000 000,*
- *it has not been registered for longer than five years. If the taxpayer is not subject to registration, the period of five years may be taken to start at the moment that the enterprise either starts, or is liable to tax for, its economic activity,*
- *it has not been formed through a merger,*
- *it does not have any associated enterprises.*<sup>85</sup>

It must be noted that the costs of the commercial, office and other buildings, as well as any other type of immovable property in use for the business or industrial buildings and structures cannot be measured as R&D costs. Thus ‘super

deduction’ is not eligible for the depreciation of this tangible fixed assets, while other kinds of tangible fixed assets may be.<sup>86</sup>

Finally, we are to mention that CCCTB referred back to CCTB when gives us the definition of R&D and does not includes additional specific rules on it.

## VII. Conclusions

The economy of Hungary mostly based on trade with foreign trade, especially with the Member States of the European Union. As Hungary is an integral part of the globalised world, the scope of action of the policymakers is limited to the liberalised world market. We do not reveal secrets when noting that in this economic situation, the innovation and R&D policy, as the fundamental factor of the possibility of introducing innovative solutions, technics or products is to be essential to reach sustainable development.

Hungary has reached remarkable development on BERD if we observe the impressive increase of the financial participation of the business sector on R&D exclusively, thanks to the generous and wide-spread tax benefits. The effectiveness of that phenomena is another economic question which cannot be the subject of our paper.

It must be clear that within the European Union, all Member States are to respect the principle of ‘acquis communautaire’ and the case-law of the Court of Justice of the European Union in the spirit of loyalty and mutual solidarity. That also means that interpreting of Article 56 The Treaty of The Functioning of The European Union (TFEU) on the freedom of services, *a taxpayer should not be excluded from providing relevant documentary evidence enabling the tax authorities of the Member States imposing the levy to ascertain, clearly and precisely, the nature and genuineness of the research expenditure incurred in other Member State. It cannot be satisfied in the name of the effectiveness of fiscal supervision.*<sup>87</sup>

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<sup>85</sup> Section 3 Article 9 CCTB

<sup>86</sup> Point i) Article 12 CCTB

<sup>87</sup> Case C-254/97 Société Baxter, B. Braun Médical SA, Société Fresenius France és Laboratoires Bristol-Myers-Squibb SA kontra Premier Ministre, Ministère du Travail et des Affaires sociales, Ministère de l’Economie et

Moreover, *precludes legislation of a Member State which restricts the benefit of a tax credit for research only to research carried out in that Member State.*<sup>88</sup> It might be evident that not just the legal act of a Member State of the EU but the practice and interpretation of the law of the tax authorities can influence the application of EU law.

Therefore, one of the central questions related to our topic is that who shall examine the evidence of R&D and what kind of standards shall be measured during the determination of R&D activities. Asking the question another way, what would happen if the competent authority of a Member State qualified an activity as R&D activity, while the competent authority of another Member State does not.

However, Hungary invented a well-founded legal construction to determine the R&D content of a specific project, the HIPO examine that issue under Hungarian case-law. Determining the R&D content of a certain project, the level of novelty is to be considered as a key question. For instance, the Curia of Hungary (the Hungarian Supreme Court) gave an interpretation of the level of novelty in relation to innovation contribution. The Curia of Hungary ruled that the novelty can be found if the level of novelty is new to the Hungarian economy.<sup>89</sup>

As the regulation of CC(C)TB gives us no additional guidelines in this field of the R&D tax allowance, the practice and the case-law may determine the framework of the level of novelty. The source of the problem is that the Member States of the European Union stand another ground in this issues according to the different intention of the current waves of economic policy. Besides this fact, the level of novelty related to R&D content measurement can influence the behaviour of the business sector. It is not an easy question because if the novelty means ‘new for the given enterprises’, the door before the multinational enterprises is opened to claim unjustified tax benefit. At the same time, such high standards as ‘new for the world’ can enhance the business sector to adopt existing solutions instead of innovation.

The CCCTB (and CCTB) may request additional discussions and generate further debates before the Council of the European Union, but in case of adopting them, the Member States should face two parallel worlds of the corporate taxation created by bounding rules of CCCTB. As the conception of CCTB and CCCTB creates a regime which should also be available, as an option, for those groups that fall short of the size-related threshold.<sup>90</sup>

At that point, the concerns may be expressed that the harmful tax competition might arise not just between the Member States of the EU but between the regime of CC(C)TB and the regulations of the Member States of the EU on corporate taxation as well.

The other side of the coin, CC(C)TB does not aim to harmonise the whole regime of the corporate taxation just the rules on the tax base. Rates and the rules on tax credit without further harmonisation can be another field of harmful tax competition, as they are as crucial as the tax base itself to determine the corporate tax. The statement of the Commission which

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des Finances és Ministère de l’Agriculture, de la Pêche et de l’Alimentation [1999] ECR I-04809, paragraph 19-20

<sup>88</sup> Case C-39/04 *Laboratoires Fournier SA v Direction des vérifications nationales et internationales* [2005] ECR I-02057, paragraph 26

<sup>89</sup> Ruling of the Curia of Hungary, Nr. Kfv.I.35.200/2016/5., paragraph 25.

<sup>90</sup> Section 5 Preambulum CCTB and Section 3 Article 3 CCTB; Section 5 Preambulum CCCTB and Section 3 Article 3 CCCTB

considers CC(C)TB *extremely effective tool for meeting the objectives of fairer and more efficient taxation* seems to be ambiguous in our viewpoint.

The very notable fact related to Hungary is that the basic approach of the provided R&D tax allowance is principally different from the CC(C)TB. Hungary offers R&D incentives after the direct costs of R&D activities, including depreciation after fixed and intangible assets without any relevant limitation, while CC(C)TB make the ‘super deduction’ eligible to both direct or indirect R&D costs.

As several Member States of the EU grant R&D tax incentives with the similar approach as CC(C)TB. Thus it seems to be necessary to review the Hungarian legislation according to the ongoing ‘evolution’ of the corporate taxation in the EU.