

## wts klient newsletter

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The Bridge.

## Dear Reader!

The summer holidays are almost here! Before you leave for your well-deserved time off, let me recommend our new four-part video series to you. This time we give an overview of the strategic, accounting, legal and taxation aspects of bookkeeping in a foreign currency. We examine which companies can benefit from switching to accounting in a currency other than the Hungarian forint. We also discuss the most important accounting standards in connection with the switch. We look at the deadlines and tasks which are important from a legal perspective too. And we examine the rules and regulations relevant for taxation.

You can watch our video highlighting the strategic aspects by clicking on this link: [wtsklient.hu/en/2017/06/07/strategic-aspects-switching-currencies/](http://wtsklient.hu/en/2017/06/07/strategic-aspects-switching-currencies/)

Please note that from now on you can watch our videos with english subtitles as well. All you have to do is switch on the subtitle function by clicking on "settings" in the right hand corner of the video.

I do hope that besides the video you will have time to read our newsletter articles that address similarly interesting topics, and that you find them useful.

Best regards,

Eszter Balogh  
partner

## Terminating employment during probation

Terminating employment during probation is legally simpler for an employer, and more cost-effective, but greater care is required.

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## Key areas of a financial due diligence

A client can heavily rely on the preparedness of experts during a financial due diligence, but it is still up to the client to set the scope of work.

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## Terminating employment during probation

"If an employer terminates an employment relationship during probation with immediate effect and without justification because the individual is pregnant or unable to work because of illness for example, this can result in an unlawful termination of employment."

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Parties to an employment contract can stipulate a probation period of up to three months from the start of the employment relationship – or up to six months in the case of a collective agreement. The probation period is designed so the employer can get to know the expertise, skills and capabilities of the employee, and their work attitude, while the employee

can experience the conditions and circumstances in the workplace. During the probation period, either party may terminate the employment **quickly (with immediate effect)**, and for the employer this also means an **easier and more cost-effective legal solution**. When terminating employment during probation, the employer has to exercise care and diligence.

**Terminating employment during probation:  
termination with immediate effect – without justification**

According to the Hungarian Labour Code, employers may terminate employment relationships during probation periods in writing with immediate effect, and without having to justify this decision. Neither the prohibitions nor the restrictions on termination apply when terminating employment relationships in this manner. A unilateral legal statement by the employer terminating the employment takes effect when delivered, and the employment is terminated immediately. It follows that it becomes impossible by definition to grant **leave** when terminating employment during probation, and so this must be **compensated financially**. In contrast to terminations, or terminations with immediate effect requiring justification, there is no need and nor is it advisable to justify immediate terminations during probation periods; it suffices if the employer specifies that the employment relationship is being terminated during the probation period with immediate effect and without justification. Nevertheless, if the employer does justify its termination notice, this must be clear, true and justified in the event of an employment lawsuit, the burden of proof lies with the employer.

## Terminating employment during probation – not an unrestricted legal tool

During all phases of a working relationship – and thus also when terminating employment during probation – employers are restricted in exercising their rights by the prohibition on abusing rights and by the equal treatment requirement. Abusing rights means, in particular, if this is directed at or results in impairing the legitimate interests of others, limiting opportunities to assert interests, harassment or repressing the freedom of expression. The actual reason for terminating the employment relationship may not contradict the legal principles outlined above, regardless whether the given case constitutes terminating employment during probation and the employer does not have to provide justification. So, **if an employer terminates an employment relationship** during probation with immediate effect and without justification because the individual is **pregnant or unable to work because of illness** for example, this can result in an **unlawful termination of employment**. Not only may the employee initiate a labour dispute, they may also turn to the Equal Treatment Authority because the employer terminating the employment during the probation period may constitute direct discrimination.

In these cases, the employer has to provide adequate proof that the reason for terminating the employment – in connection with the examples above – was not the employee's pregnancy or incapacity to work owing to illness, but some other reason related to the employee's skills or conduct. In this respect, **during probation periods it is advisable to confront employees with their mistakes** and record this in writing, **issuing a verbal or written warning in justified cases**. In cases where the employee is incapable of working for a significant part of the probation period (meaning the employer is not able to learn about or judge the employee's work during the period), terminating the employment during the probation period is very risky from a legal perspective in light of the above.

## Terminating employment during probation: serving notice during probation

Terminating an employment relationship during probation is only legal if the notice is served properly, which means the termination notice is given to the employee during the probation term. **If posting the notice**, you must make sure that the termination notice does not get posted on the last day of the probation period, the employee **must receive it during the probation period**.

On the basis of the above, terminating employment during probation is a simpler legal solution for the employer, but it is still worthwhile proceeding only after weighing up all the circumstances.

## Key areas of a financial due diligence

During a financial due diligence of the target company we should pay attention to the following:

- assessment of general financial position
- future plans
- tax returns
- related-party transactions

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In my article on the [need for a due diligence](#), I touched upon the fact that while a client can rely heavily on the preparedness and know-how of the experts involved in a financial due diligence, it is still up to the client to define the scope of work.

I would like to help future clients that have less experience in this area by summarising the activities that are worthwhile carrying out in the course of a financial due diligence.

I analyse four areas in some detail in this article, and will continue with other important areas in subsequent articles of this series.

### 1) Assessment of general financial position

During a financial due diligence it is important to be **aware of the target company's history**. If we subject the financial statements to a detailed analysis, there is a significant chance we will notice if the seller has massaged its figures to try and make the situation seem better than it actually is. The further we delve back into the past, the easier it becomes to identify trends and cleanse the overall picture of non-recurring effects.

It is also important for us to **understand the current financing structure**. If we can perhaps provide financing under better terms, then we can take the advantages of this into account during the pricing.

Of course, we also need to know if the current financier will withdraw its financial resources because it does not want to continue supporting the company following a change of owner for example; will we be able to replace the current funding immediately?

## 2) Future plans

If the financial due diligence devoted sufficient attention to analysing historical data, we can also easily detect if the future plans are based on financial optimism rather than plain realities. There could be real potential for significant growth or a leap in profits at the target company, and it is not a bad idea if we find tangible indications of this in other ways. If planned incomes rise without any rational explanation, or if planned costs fall in the same manner, **we should have no qualms in questioning the reliability of the plans** and prepare our own version instead.

## 3) Tax returns

During a financial due diligence, reconciling general ledger data with tax returns does not create much added value per se. This is when the person conducting the due diligence can gain assurance that the filed tax returns of the target company were properly accounted for and included in the financial statements. Mistakes can be made here too, but the **real problem comes if the target company did not declare tax**, or did not declare as much as it should have done.

This is why those carrying out the tax due diligence must be aware of the target company's operations, they must be able to judge which tax types apply to the company, and assess on this basis if the amount of a tax falls significantly short of the level expected given the company's size and activity.

## 4) Related-party transactions

**Related-party transactions** can have adverse impacts on the target company not just from a taxation perspective. For instance, if the target company bought a service or product for too much money, or sold something too cheaply, and then failed to make the necessary adjustments when assessing its tax base. The target company may also have received a product or service from a related partner at a favourable price (below market price) and under favourable conditions, which very probably had a benign impact on its ability to generate income. If these sources dry up in the future, and the company can only procure these under normal market conditions after the change in owner, this could result in a significant revision of future plans and return calculations.

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"The information super-weapons of tax authorities are only effective if they are used in the right way."

Tamás Gyányi, WTS Klient Hungary  
Partner

Source: inforadio.hu



### Turn on your radio!



Targeted tax inspections are more likely to reveal activities and people involved in the black and grey economy. Yet we cannot call these inspections targeted if the tax authorities do not use the information available properly. Tamás Gyányi, Tax Partner at WTS Klient Hungary will be talking about, among others, this to InfoRadio on the evening of 8 June.

Listen to the discussion on the radio, or click on [this link](#). Please note that the conversation is available only in Hungarian.

This WTS information does not constitute advice and it serves only to provide general information about selected topics.

Any information contained herein shall thus not be considered exhaustive, and nor may it be relied upon instead of advisory services in individual cases. We accept no liability for the accuracy of the content.

Should you have any questions regarding the above or any other professional issues, please do not hesitate to get in touch with your WTS advisor or use any of the contact details below.

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