



Dear Readers,

Anyone watching the football world cup will know that a good goalkeeper is a stable factor for any team. Ironically, the only reliable and stable factor in taxation is the continuous change and development. One example of this is online invoicing, which will [go live on Monday](#) in Hungary, and we have to take the threats of penalties seriously. If you still have not done so, please do not forget to register your company in the live system or ask your representative to do so: the live system has been "accepting" registrations since 18 June.

For those searching for international news, I recommend WTS Global's latest publication entitled [Transfer Pricing Newsletter](#), where you can find information on the latest news regarding transfer pricing across 9 countries.

On page 7 of our monthly newsletter you can also read about the exclusive [cooperation agreement](#) concluded between WTS Global and LATAxNET, thanks to which we can now provide value-adding tax consultancy services in 18 South American countries.

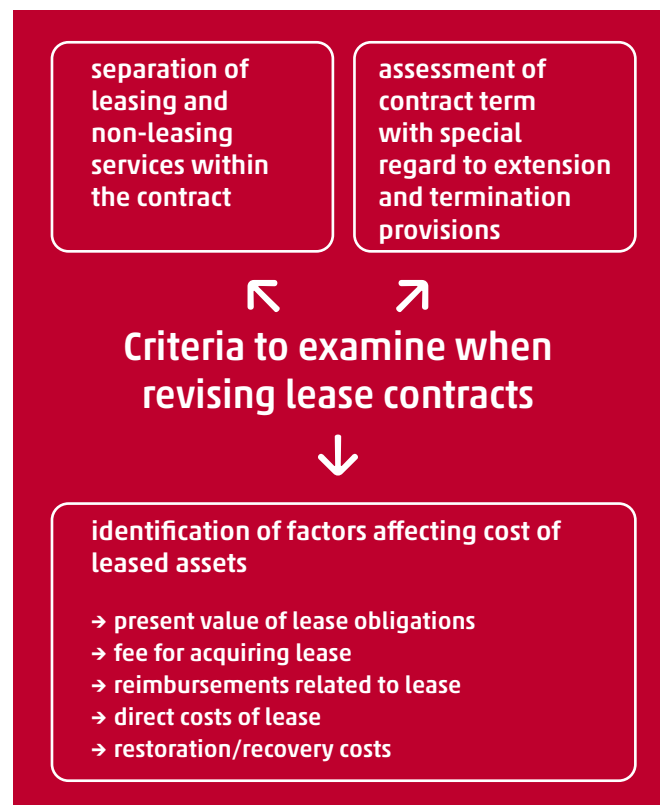
Should you have any queries, please do not hesitate to contact the professionals at WTS Klient.

Tamás Gyányi  
partner

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## IFRS 16: integrating off-balance-sheet financing into the balance sheet



Author: **Csaba Baldauf**  
csaba.baldauf@wtsklient.hu

From a Hungarian point of view, recent years have seen extensive harmonisation in the accounting practice of [lease contracts](#). Although the detailed regulations and conditions may contain some differences, the [International Accounting Standards \(IFRS\)](#), Hungarian accounting regulations and even the German accounting standards (HGB) basically followed the same logic for accounting procedures.

So far, the main rule was that while the leased asset and the related lease obligation were recorded on the balance sheet in case of **finance leases**, for **operating leases** the asset used by the company and the obligation derived from such

contracts were not recognised directly in any row of the lessee's balance sheet. IFRS 16 Leases turns this practice on its head.

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### WTS Klient Hungary awarded title of Reliable Employer

Volkmar Wenzel, Ambassador of the Federal Republic of Germany, handed over the title of "Reliable Employer of 2018-2019" to Zoltán Lambert, managing partner of WTS Klient Ltd., at the general meeting of the German-Hungarian Chamber of Industry and Commerce on 29 May. This is awarded to companies that are exemplary in looking after their employees' working and living conditions. The five-strong jury evaluated applicant companies based on 7 criteria: remuneration, social welfare benefits, health and working conditions, training and further education, and opportunities to develop.

## Who has to adopt IFRS 16 and from when?

The change affects business entities who compile their individual financial statements according to IFRS, and who prepare group reports for consolidation under IFRS. They will have to adopt the new standard for the first time **for financial years beginning on or after 1 January 2019**, or if they are early adopters of IFRS 15 Revenue from Contracts with Customers, they may use the opportunity to apply IFRS 16 early too.

## What changes does IFRS 16 bring?

The new standard will not trigger any substantial change in the definition of either operating or finance leases compared to the previous regulation (IAS 17 Leases). In terms of accounting practices, the lessor side of lease contracts is not affected either. However, **lessees** will have to **face major changes**.

One such change is that **increased emphasis will be given to the acquisition of control over assets**. If a contract regulates the control of a certain asset for a given period in exchange for compensation, the contract is considered a lease contract or a contract containing a lease component.

As a result of the changes, the lessee has to include the leased asset and the right of use thereof among its own assets, and the lease (rent) obligation derived from the lease contract under its liabilities. The cost of a lease obligation is the present value of the lease (rent) payment, whereas the cost of the right of use amounts to the initial value of the lease obligation, any fees related to acquiring the lease, any related direct expense and the costs of recovery, less any reimbursements. Depreciation must be booked over the lease term and/or the expected useful life of the asset.

## What exceptions are there?

The new provisions are not applicable for **short-term lease contracts and low-value asset leases**: these can still stay **off the balance sheet**, any related cost must be accounted for against the reporting year profit. A lease contract is considered short-term if its term does not exceed 12 months. Any contract involving purchase options shall not be deemed short-term even if its term does not exceed 12 months. The accounting policies must define what assets qualify as low-value, and the individual contracts shall be assessed against this threshold.

You can listen to the radio interview about this topic by clicking here:



[wtsklient.hu/2018/05/24/ifrs-16-standard/](https://wtsklient.hu/2018/05/24/ifrs-16-standard/)

Please note that the conversation is available only in Hungarian.

## How should companies prepare?

Companies will need to harmonise their **accounting policies** with the new standard, and the necessary decisions have to be made. Furthermore, companies need to review their **existing contracts** and assess whether the individual contracts necessitate the adoption of the new accounting practice or whether the exemption rules might apply to them. While it may seem so at first glance, in truth lease contracts are not the only type of contracts that can contain lease components, so it might be justified to review all contracts. The new requirements may even necessitate improvements to **systems of records** as well.

It must also be kept in mind that other contracts might be affected too owing to the accounting practices in accordance with the new rules. For instance, incorporating liabilities derived from rental fees for an entire rental period into the balance sheet will impact adversely on previous indebtedness ratios, which in extreme cases can lead to non-compliance with credit covenants, and in turn render it necessary to renegotiate terms with financiers.

## Financial consulting

If you have questions about leasing or specifically about the adoption of the new IFRS 16, please contact our [financial consulting experts](#).

Csaba Baldauf  
senior manager  
+36 1 887 3792  
[csaba.baldauf@wtsklient.hu](mailto:csaba.baldauf@wtsklient.hu)

## → Our expert



**Csaba Baldauf**  
senior manager  
Telephone: +36 1 887 3792  
[csaba.baldauf@wtsklient.hu](mailto:csaba.baldauf@wtsklient.hu)

### Education

- » economist
- » chartered accountant
- » certified auditor

### Specialisations

- » due diligence
- » transformation
- » consolidation
- » IFRS

### Languages

Hungarian, German, English

### Latest publications

- » [Financial diagnostics: are the finances of your company in order?](#)
- » [Internal financing: financing using own resources](#)
- » [Comprehensive tax audit from an accounting perspective](#)

## Right to deduct VAT and right for a refund of VAT

Author: **Tamás László**  
tamas.laszlo@wtsklient.hu

The increased activity of the Court of Justice of the European Union is exerting a growing impact on the cross-border business activities of companies and on related tax issues. We recently reported on the ruling of the Court of Justice of the European Union in case no. C-628/16, which affected the tax law judgement on chain transactions, while somewhat earlier we closely examined the ruling influencing the judgement on leasing VAT and another one affecting reverse charging. Now we turn the spotlight on a judgment detailing when the right to deduct VAT and the right for a refund of VAT arise.

"It is not enough that the transaction was performed, the invoice is also necessary for the VAT refund."

### It took 6 years to realise they were doing things wrongly

On 21 March 2018 the Court of Justice of the European Union published its judgment in case no. C-533/16, namely the case initiated by an application for a preliminary ruling submitted by the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) on 20 October 2016. In this case, companies related to the Hella Group (Hella companies) sold casting moulds for the manufacture of lights for Volkswagen AG (Germany) passenger cars, with the place of performance being Slovakia.

The Hella companies did not include VAT on their invoices because they considered the transactions not as supplies of goods but as "financial compensation", which is exempt from VAT. However, in 2010 they realised this was incorrect, and issued invoices charging the VAT due by Volkswagen AG, and filed corrective VAT returns for the period between 2004 and 2010 and paid the unpaid tax to the Slovak state.

### Was the right for a refund of VAT statute-barred?

Volkswagen submitted an application to the Slovak tax authority for a refund of the VAT charged on the supplied goods. The Slovak tax authority partly upheld Volkswagen's application and ordered a VAT refund for the supply of goods between 2007 and 2010. However, it dismissed the refund of VAT for the supplies between 2004 and 2006 with reference to the fact that the right for a refund of VAT arose on the date of delivery of the goods, namely, at the same time as the tax liability.

Consequently, the right for a refund of VAT for the period from 2004 to 2006 had expired by the time the application for a refund was submitted (these periods are statute-barred). In Slovakia the case was forwarded to the Supreme Court, which turned to the Court of Justice of the European Union for a legal interpretation.

### Member state legislation contradicting European Union law

According to the ruling of the Court, **any Member State legislation** under which in circumstances such as those at issue in the main proceedings in which the benefit of the right for a refund of VAT is denied on the grounds that the limitation period provided for the exercise of that right began to run from the date of supply of the goods and expired before the application for a refund was submitted is **contradictory to European Union law**. continued on page 4

wts

"Using cash benefits a company with a headcount of 60 people can obtain a tax benefit of nearly HUF 3 million compared to a wage increase of similar proportions."

Tamás Gyányi, WTS Klient Hungary partner

Source: inforadio.hu



### Have you heard?



Retaining employees and a lack of skilled professionals are serious problems worldwide, hence in Hungary too. While company managers also have to focus on applying the most suitable taxation solutions to attract and retain their workers, the needs of employees can differ quite significantly in different periods of their lives. "With due care, the most optimal strategy can be developed for every situation" – says Tamás Gyányi, partner of WTS Klient Hungary, who spoke about the tax aspects of retaining employees on InfoRadio on 7 June.

[Listen to the conversation at this link!](#)

Please note that the conversation is available only in Hungarian.

The Court declared that a refund of VAT may be requested if all substantive and formal conditions giving rise to a right to deduct VAT are met, namely, it is not enough that the transaction was performed, the **invoice is also necessary** for the VAT refund.

A [major modification](#) of the rules on deducting input VAT entered into force in Hungary on 1 January 2016, which must be adopted in practice by taxpayers from 2018.

### VAT consulting

If you have any questions about VAT deductions or the right for a refund of VAT, do not hesitate to contact the [VAT consultants](#) of WTS Klient Hungary.

Tamás László  
manager  
+36 1 887 3748  
tamas.laszlo@wtsklient.hu

## → Our expert



### Tamás László

manager  
Telephone: +36 1 887 3748  
tamas.laszlo@wtsklient.hu

### Education

- » economist
- » certified tax advisor
- » certified value added tax expert

### Specialisations

- » tax advisory
- » value added tax planning
- » tax authority inspections
- » reviews of transfer pricing documentation obligations
- » due diligence reviews

### Languages

Hungarian, German, English

### Latest publications

- » [Tax law judgment on chain transactions based on new case ruling by Court of Justice of European Union](#)
- » [Increasing administration when deducting input VAT](#)
- » [Tax implications of inspections](#)



## Product fee warehouse – product fee payment liability can be avoided

Author: **Zoltán Cseri**  
zoltan.cseri@wtsklient.hu

The product fee regulation in Hungary contains several tools with which the [product fee payment liability](#) can be avoided. One such option is the product fee warehouse which was [introduced nearly 4 years ago](#), yet experience shows that companies in Hungary do not really take advantage of it. In this article I endeavour to respond to the important issues related to product fee warehouses, and to highlight the role of a product fee warehouse in the product fee system.

### What is a product fee warehouse?

Based on the product fee regulation there are two types of product fee warehouse: **industrial** and **commercial**. What is common in both is that they are a domestic property operated with the authorisation of the state tax authority (NAV). The difference, though, is in the transactions and processes that can be carried out with the products subject to a product fee. In an industrial product fee warehouse, products subject to a product fee can be produced, processed and incorporated into other products as a component or part, or they can be prepared for recycling or stock-piled as inventories; in a commercial product fee warehouse on the other hand, products subject to a product fee can only be stored.

You can listen to the radio interview about this topic by clicking here:



[wtsklient.hu/2018/06/21/termekdij-fizetesi-kotelezettseg/](https://wtsklient.hu/2018/06/21/termekdij-fizetesi-kotelezettseg/)  
Please note that the conversation is available only in Hungarian.

### Industrial and commercial product fee warehouse

type of product fee warehouse	industrial	commercial
subject to licence	yes	yes
strict record-keeping	yes	yes
data reporting	yes	yes
eligible activity	production, processing of product subject to product fee, its incorporation into another product as a component or part, preparation for recycling, inclusion in stocks	storage of product subject to product fee
product fee payment liability upon entry into warehouse	none	
product fee payment liability upon sale within warehouse	none	

#### What is required to operate such a warehouse?

Operating a product fee warehouse is subject to a **licence**. This should be applied for at the NAV by completing and electronically submitting form 18TRAKT. Only business entities complying with the strict conditions laid down in the laws and regulations can receive a licence to operate a product fee warehouse in Hungary: for example, if they are the lawful user of the property used to operate the product fee warehouse, they apply a strict record-keeping and accounting documentation system, they are not under bankruptcy, liquidation, voluntary liquidation or forced deletion procedures, they are qualified as product fee administrators or employ an administrator with such qualifications, etc.

The licence application is assessed by the NAV within 30 days, and can be **awarded for up to 5 years**. After the 5 years, and if the licensing conditions still apply, the licence can be extended for an additional 5 years.

#### What is the essence of the product fee warehouse?

The legislator introduced the product fee warehouse in Hungary based on other **tax warehouses** (VAT warehouse, excise warehouse). Essentially, when a product subject to a product fee is **entered into** or **sold within such a warehouse**, no product fee payment liability arises. Removing a product subject to a product fee from the product fee warehouse for domestic purposes, and transferring the ownership right, qualifies as its first marketing. This will result in a product fee payment liability. However, if the products are **removed** from the product fee warehouse **to abroad**, then **no product fee payment liability arises** whatsoever.

Generally speaking, the product fee payment liability can be deferred when a product is removed for domestic purposes, but

when it is removed to go abroad the payment liability can definitively be avoided.

To understand the above more easily, let's look at a **practical example**. Domestic manufacturer "A" produces electronic products subject to a product fee, and sells them to domestic business entity "B". Then "B" sells the products to companies "C" and "D", which are also domestic business entities, and will in turn sell all of the products abroad. How will the product fee payment liability change in the case of the individual players with and without the use of a product fee warehouse?

When "A" sells its product subject to a product fee to domestic customer "B", in principle a product fee payment liability will arise at "A" on the grounds of first marketing, if the parties do not use a product fee warehouse. If "A" pays the product fee, "C" and "D" may reclaim the product fee on the products sold abroad, once the delivery abroad is confirmed and supported with the appropriate records and invoices.

However, let's assume "A" immediately delivers its products subject to a product fee to a product fee warehouse, then sells them to "B" within the product fee warehouse, and "B" sells them within the product fee warehouse to "C" and "D". Since both "C" and "D" will be selling the products abroad in the end, not only does no product fee payment liability arise at either party, but the reclaim procedure requiring a lot of extra work and administration can also be avoided.

In light of the above, a product fee warehouse **can typically be expedient for transactions involving 3 or more players**, where contractual obligations cannot be assumed owing to legal requirements, and where the parties would like to avoid the extra administration related to reclaiming the product fee.

### Strict record-keeping, data reporting

However, the legislator in Hungary does not provide the advantages offered by a product fee warehouse free of charge. The product fee warehouse licensee has to **keep continuous and updated electronic records** of the stocks of products subject to a product fee which are stored at the warehouse, are used for processing, production, installation as a component or part in another product, or are prepared for recycling. The records must also include the products subject to a product fee which are entered into or removed from the warehouse, and **it has to report data** on the warehouse stocks electronically on a **quarterly** basis, with specific content [to the NAV](#), by the 20<sup>th</sup> of the month following the given quarter.

### Environmental product fee consulting

If you participate in a transaction with multiple parties involving products that are subject to a product fee, and the products will be taken abroad, in part or in full, it is definitely worth considering the use of a product fee warehouse. Please do not hesitate to contact our [environmental product fee consultants!](#)

Zoltán Cseri  
manager  
+36 1 887 3747  
zoltan.cseri@wtsklient.hu

### → Our expert



#### Zoltán Cseri

manager  
Telephone: +36 1 887 3747  
zoltan.cseri@wtsklient.hu

#### Education

- » certified VAT expert
- » tax consultant
- » environmental product fee administrator
- » economist

#### Specialisations

- » tax consulting in various taxes
- » consulting on environmental product fee
- » VAT registration
- » preparation of transfer pricing documentation

#### Languages

Hungarian, German, English

#### Latest publications

- » [How to reclaim money from the NAV: the benefits of health fund membership](#)
- » [Changes to the Act on the Environmental Product Fee effective from 1 January 2018](#)
- » [Foreign workers – the rules of taxation](#)



## Transfer tax exemption in property sales in Hungary

Author: **Béla Kovács**

bela.kovacs@wtsklient.hu

Our phones were rather busy at our Hungarian office prior to Christmas in 2009. Everybody wanted to **sell their shares in companies owning real estate**, since at that time, if you acquired properties this way, the party acquiring the share was granted transfer tax exemption, meaning they did not have to pay any charges on the [real estate obtained as an asset of the company](#).

The transfer tax exemption did not apply to those who acquired such real estate at the beginning of the following year. But let's look at this issue more closely now, i.e. how you can show up on the tax authority's radar as either a seller or a buyer based on the current laws and regulations.

### As a seller: definition of companies with real estate

Until 2010, if a foreign parent company in your group had a share in a Hungarian company that had a significant real estate holding in Hungary, you did not have to pay attention to Hungarian tax laws provided the foreign company wanted to dispose of the property by selling its share in the Hungarian "real estate" company to its customer. **In 2010**, however, the **definition of a "company with real estate"** was added to the corporate tax law along with the **potential corporate tax liability** generated at its foreign owner.

**Real estate purchase or share acquisition  
in a company with real estate**



**potential transfer tax payment obligation**

Consequently we first have to review whether the shares were really sold or withdrawn, and whether the company with Hungarian real estate will actually be the “company with real estate” by law. A Hungarian company will qualify as such if, in its financial statements including related companies, **real estate accounts for at least 75% of total assets** and the company’s foreign owner is resident in a state with which Hungary does not have a double taxation treaty in force, or where the valid treaty enables exchange gains to be taxed in Hungary (the latter condition is generally fulfilled in Hungary’s more recent tax treaties). If these conditions prevail, it is worth contacting a Hungarian tax consultant and asking for additional guidelines since the law specifies **special reporting, return filing and domestic tax payment obligations** for the foreign owner.

Naturally, if the Hungarian company owning the real estate sells the real estate without the foreign parent company being affected, the Hungarian company holding the real estate may incur a tax payment liability as part of its normal corporate tax base.

#### As a seller: the concept of reported shares – be prudent!

Here it is worth noting that if a domestic company has a share in another company with significant domestic real estate, and the domestic company sells its share in the company after a period of at least 1 year, **you can save a lot** if the company selling the share reported the acquisition to the tax authority when buying the share, so it should be treated as a reported shareholding. The profit generated when selling such a share **will not be taxable in terms of corporate tax**. This is particularly important if there is a significant real estate in the company that you acquired, whose value is potentially about to grow, and you know that you would like to sell this share later on to generate a profit.

You can listen to the radio interview about this topic by clicking here:



[wtsklient.hu/2018/06/13/ingatlanugyletek/](http://wtsklient.hu/2018/06/13/ingatlanugyletek/)  
Please note that the conversation is available only in Hungarian.

#### As a customer: transfer tax payment obligation

As a customer you generally have to pay a **4% transfer tax** on the sales value of the acquired real estate in Hungary. You can incur a transfer tax payment obligation if the real estate is acquired indirectly by acquiring a share in the company owning the real estate (acquisition of capital contribution in company with domestic real estate). According to the definition in the Hungarian corporate tax act, which deviates slightly from the definition described above but has a similar content, this is a company which directly owns significant real estate (at least 75% relative to total assets) or it has a share of at least 75% in another company which fulfils the above conditions.

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#### Tax planning in the case of property transactions

If you are interested in when and under what conditions the sale or purchase of real estate acquired as an asset of the company can enjoy tax and transfer tax exemption in Hungary, and what the tax implications of a specific case are, please contact our tax experts.

Béla Kovács  
senior manager  
+36 1 887 3730  
[bela.kovacs@wtsklient.hu](mailto:bela.kovacs@wtsklient.hu)



#### WTS Global and LATAXNET entered into an exclusive cooperation agreement

*With the cooperation agreement between both tax networks signed by Cristian Alba Rosso, President of LATAXNET and Fritz Esterer, Chairman of WTS Global, WTS Global has now top-tier coverage in 18 South American countries.*

WTS Global and LATAXNET started an exclusive cooperation which was recently signed in an official ceremony held in Munich, Germany. The agreement was closed in the joint endeavor to serve its international clients in all tax matters independently and without the constraints of an audit firm seamlessly across the globe. Furthermore, both organizations are united in the ambition to further build the global tax practice of the future. WTS Global and LATAXNET have been working together successfully for over 5 years before closing the cooperation agreement. At the signing ceremony 9 representatives from 7 countries – Argentina, Brazil, Chile, Columbia, Mexico, Peru and Venezuela – were present from LATAXNET.

## Planning possibility in special cases

- transaction between related companies under corporate tax act
- preferential transformation

tax expert opinion,  
binding tax ruling request

### Application of transfer tax exemption – be cautious!

So the transfer tax basically has to be paid, but **transfer tax exemption** does apply in certain cases. Without aiming to give an exhaustive summary, there can be situations where the transfer of the real estate or the acquisition of the capital contribution takes place between [related companies](#). Here the law can exempt the party acquiring the assets from payment of the transfer tax (in the former case, however, the core activity of the asset-acquiring company is important). Yet studying the detailed Hungarian rules is crucial again, especially if we want to ensure transfer tax exemption for the transaction with more complex tax planning (e.g. through a [preferential transformation](#)). Due to the complicated system of conditions we recommend applying these after a preliminary consultation with a tax expert, or after receiving a positive response to a [binding tax ruling](#).

### → Our expert



#### Béla Kovács

senior manager  
Telephone: +36 1 887 3730  
bela.kovacs@wtsklient.hu

#### Education

- » economist
- » certified tax advisor
- » certified value added tax expert

#### Specialisations

- » tax advisory in all tax types
- » value added tax planning
- » tax authority inspections
- » reviews of transfer pricing documentation obligations
- » due diligence reviews

#### Languages

Hungarian, German, English

#### Latest publications

- » [Tax implications of property development](#)
- » [Lubricating oil and excise tax: what's this about?](#)
- » [How to submit the VAT registration form](#)



## Tax penalty and late payment interest in the new Hungarian Act on Rules of Taxation

Author: **dr. Tamás Felsmann**  
tamas.felsmann@wtsklient.hu

### For tax inspections it is good to know that:

- the **tax penalty may be 50% or even 200%**, but in certain cases the tax penalty may be decreased
- a **conditional tax penalty allowance** may automatically exempt us from paying 50% of the tax penalty levied
- in the case of a **tax shortfall**, the tax authority calculates interest equalling **double the base interest rate of the central bank**

In several of our previous articles (e.g. [here](#) and [here](#)) we have discussed the provisions of the new Hungarian Act on Rules of Taxation and the Act on Tax Administration Rules, which came into force from 2018. In the first article of our current two-part series we will focus on the rules surrounding the tax penalty and late payment interest, particularly, the conditional **tax penalty allowance**, which is the biggest change in Hungary compared to the former rules.

#### When can we expect a tax penalty?

A tax penalty may be levied after [tax inspections](#) when the Hungarian tax authority establishes a tax difference in its decision to the detriment of the taxpayer (basically it finds that the tax liability is higher than the amount declared by the taxpayer). In the case of a tax difference, a tax penalty can only be levied if it **also qualifies as a tax shortfall**. Pursuant to the new Act on Rules of Taxation, a tax difference established to the detriment of the tax-



payer only qualifies as a tax shortfall in the case of self-assessment if the tax difference was not paid by the due date or if a budget grant was claimed. It is important that any overpayment as of the original due date can only be considered payment of the tax liability if such overpayment also prevailed on the start date of the inspection.

### How much is the tax penalty?

As a rule of thumb, a tax penalty still amounts to **50% of the tax shortfall or any unjustified claim**. However, Hungarian law sanctions certain actions more stringently, i.e. the tax penalty will amount to **200% of the tax shortfall** if the tax shortfall is connected to:

- concealed income,
- the production and use of false accounting records, books or data (this stipulation was not included in the former Act on Rules of Taxation),
- the falsifying or destruction of receipts, books and records.

Apart from the **most severe cases of the above infringements**, the tax authority in Hungary can weigh up the amount of a specific tax penalty. There is a slight change of approach here: a decrease in the tax penalty used to be subject to the taxpayer having to prove they acted with the due care expected in the given situation; this is now only one of the consideration aspects specified in the law (the list is otherwise not exhaustive). Additionally, when mitigating a tax penalty or waiving it, the size of the tax shortfall as well as the circumstances under which it arose should also be considered along with the weight and frequency of the taxpayer's unlawful behaviour (action or failure to act).

### Conditional tax penalty allowance

The most important new feature in the new Hungarian Act on Rules of Taxation is the conditional tax penalty allowance, which

is related to levying the tax penalty. Essentially, if a taxpayer **waives their right to appeal** against a first-instance decision on a retrospective tax assessment, and **pays the tax difference** defined in the resolution by the due date, then **50% of the tax penalty is waived**. This is clearly a significant allowance, yet will make it extremely difficult to decide whether it is worth [lodging an appeal](#) or not in a specific case. It should be noted that while the allowance rule looks simple at first sight, the details are important.

### Late payment interest

If a tax shortfall is established you can expect late payment interest too. This is essentially **double the base rate** of the National Bank of Hungary. The late payment interest of the tax shortfall can be charged for the period between the original due date and the date of the inspection report, but for no more than 3 years. In the case of circumstances requiring special consideration, the amount of the late payment interest can theoretically be decreased as well, except for tax shortfalls where there are no legal grounds for mitigating the tax penalty.

### Assistance in any questions regarding tax penalties and appeals

The tax experts of WTS Klient Hungary will happily assist you with any questions regarding tax penalties and deliberating on the possibilities for appeal. If [authorised](#), we can take care of all the administration for you.

dr. Tamás Felsmann  
tax law specialist  
+36 1 881 0621  
tamas.felsmann@wtsklient.hu

## → Our expert



### dr. Tamás Felsmann

tax law specialist  
Telephone: +36 1 881 0621  
tamas.felsmann@wtsklient.hu

### Education

- » tax consultant
- » tax lawyer
- » lawyer

### Specialisations

- » representation at the tax authority
- » legal remedy procedures
- » NAV certificates
- » payment relief requests
- » advance tax ruling requests
- » consulting in tax procedural issues and in tax lawsuits
- » EKAER

### Latest publications

- » [Appeals in tax cases](#)
- » [New draft decree on live invoicing, or online data reporting](#)
- » [Changes to tax enforcement law](#)

### Languages

Hungarian, German, English

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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.

Services of the WTS Klient Hungary:

- » Tax consulting
- » Financial advisory
- » Legal consulting
- » Accounting
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#### WTS Klient Hungary

1143 Budapest • Stefánia út 101-103. • Hungary  
Telephone: +36 1 887 3700 • Fax: +36 1 887 3799  
info@wtsklient.hu • www.wtsklient.hu

#### WTS Klient Ltd.

Registered seat:  
H-1143 Budapest, Stefánia út 101-103.  
Company registration number: Cg.01-09-930353

#### WTS Klient Tax Advisory Ltd.

Registered seat:  
H-1143 Budapest, Stefánia út 101-103.  
Company registration number: Cg.01-09-978231