

wts klient newsletter

WTS Klient.
The Bridge.

Dear Readers,

Thanks to globalisation and the free movement of workers within the European Union, the number of Hungarian companies employing foreign colleagues is continuously increasing.

We have dealt with issues related to working abroad in our earlier newsletters, in the [Expat News](#) series and in a number of articles. We gave presentations and we also presented the new, 90-page WTS [international publication](#) covering this topic. We also published our own brochure, [Infoletter](#) about German people working in Hungary in German and Hungarian languages. So it's high time to dedicate the new episode of our quarterly video series to foreigners working in Hungary. In the first part of the series I am going to present the strategic aspects of the subject. The video is available at the following link:

<http://wtsklient.hu/en/2017/09/06/strategic-aspects-working-abroad/>

Please switch to English subtitles by clicking on "settings" in the right-hand corner of the video!

I hope that our new series will be useful for you and your company in enjoying a dynamic start to the autumn after the summer holidays.

Tamás Dely
Business Development Director CEE

Reclaiming foreign VAT: final deadline just round the corner

Do not forget about reclaiming foreign VAT soon – the final deadline is 30 September! Requests have to be submitted to the NAV for all Member States. » [page 1](#)

A new Act on Rules of Taxation and tax administration procedure law

It is worth paying attention to the parts of the drafts on the new Act on Rules of Taxation and the tax administration law affecting NAV inspections. » [page 2](#)

Do not forget about reclaiming foreign VAT! Final deadline just round the corner...

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Reclaiming foreign VAT is an issue that is often forgotten. The final deadline for this regarding VAT charged abroad in 2016 is 30 September 2017. In technical terms, this is a limitation period, which essentially means that applications cannot be filed after this date and we can no longer reclaim the tax.

So what is this actually about?

In short, reclaiming foreign VAT stems from the fact that in our monthly or quarterly VAT returns in Hungary we cannot reclaim or deduct the tax amount of invoices received from countries of the European Union (and three other European countries, more on that later) which include local VAT. **The amount of VAT charged abroad, however, is not a lost cost**, a reclaim request can be made if the acquisition of the product purchased abroad or the service used abroad is connected to the company's business activity.

Which invoices are eligible here?

Companies typically receive VAT-free invoices for products purchased from abroad or for services received from a foreign company. However, **in the case of products or certain special services** (e.g. accommodation, catering) **purchased when abroad, local VAT is charged**. These can happen frequently in the case of [foreign postings](#) for example, when a staff member returning from abroad brings the hotel invoice back including foreign VAT. Value added tax charged abroad is generally not a significant item in the life of a company, but in the event of frequent foreign postings, the many smaller items can collectively add up to a considerable foreign VAT reclaim in Hungary one day.

However, VAT may also be charged abroad in the case of transactions with higher amounts (e.g. VAT implications of foreign tool costs in the case of companies in the automotive industry). In such cases, companies can lose serious amounts if they do not react in time.

It is also worth mentioning the **Hungarian commercial representations of foreign enterprises** which for lack of any business activity in Hungary are not subject to the Hungarian VAT law (no Hungarian VAT returns are filed either), but due to the business activity of the foreign enterprise they represent, they may reclaim VAT. In their case, within the framework of reclaiming foreign VAT, the foreign enterprise is entitled to reclaim the Hungarian VAT recharged to the commercial representation.

How it works

Fortunately, you don't have to request a refund of the charged tax separately for each country, **the request has to be submitted on an "ELEKAFA" form to the NAV**, but on a separate sheet for each country. The NAV forwards the individual requests to the tax authorities of the given countries, which then decide on refunding the VAT. **The invoices do not always have to be attached** to the request, but the content of the invoiced items has to be indicated on the form. If the invoices or other information are needed during the procedure, the foreign tax authority requests this directly from the applicant. It is worthwhile paying close attention when completing the form because it is easy to make a mistake with the amount of the requested tax refund due to the different currencies.

As mentioned above, the final deadline for submitting these requests is 30 September of the following year. You do not have to wait until then, the request can be filed earlier, but any one request has to cover a period of at least three months.

Useful information regarding the procedure

A Hungarian company is entitled to a refund of VAT charged abroad to the extent that the local taxpayers are entitled to in the given country. This means that the **VAT deductibility of an item should not be judged according to Hungarian VAT law**, but rather based on the rules of the given country. In Hungary, for example, the VAT allocated to the acquisition of fuel may not be deducted on an item-by-item basis (i.e. it cannot be deducted even if we re-fuel the car during a business trip) but there is no guarantee at all that this will be the rule in the given EU Member State.

Reclaiming foreign VAT is possible for value added tax charged **in any EU Member State**, and the tax charged in "**recognised third countries**" can also be refunded. These states are Liechtenstein, Switzerland and Norway. However, one important difference is that tax reclaim requests for recognised third countries do not have to be initiated through the NAV, but in the given country.

We will be happy to assist you with reclaiming foreign VAT and with subsequent procedures in the case of both domestic and foreign refund requests, and we will gladly provide further information regarding the detailed rules as well.

A new Act on Rules of Taxation and tax administration procedure law – new rules expected in connection with tax inspections

Expected effects of new Act on Rules of Taxation and tax administration procedure on NAV inspections:

- ⇒ shorter inspections, stricter deadlines
- ⇒ deadline for comments, with a limitation period
- ⇒ appeals may only refer to new facts and circumstances under strict conditions
- ⇒ prosecutor reminders and action

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As mentioned in our earlier [article](#), the Act on Rules of Taxation will be re-created in two new laws. Professional bodies and all interested parties were able to express their opinions on the draft Act on Tax Administration and the draft Act on Rules of Taxation – which kept its name but has new content – until 18 August 2017, so the final text is not yet available. However, according to the drafts, several detailed rules of tax inspections and tax authority procedures are set to be modified.

What do the Act on Tax Administration and the new Act on Rules of Taxation cover?

Despite its significant length, the current version of [Act XCII of 2003 on the Rules of Taxation](#) relies on [Act CXL of 2004 on the General Rules of Public Administration Procedures and Services \("Ket."\)](#) as its underlying legislation (both of them available in Hungarian). **The regulations which are parallel in many cases but also different in terms of detailed rules created serious dilemmas for those trying to apply the law.** Aspects such as legal remedies applicable in tax administration procedures are fully regulated in the Act on Rules of Taxation

(so applying the Ket. does not even come into question); this information can only be gleaned from technical commentaries, which are rarely read by the public. The need for ease of comprehension required that this dichotomy be eliminated, and a standard, sui generis tax procedure system of rules be created. According to the [official information provided by the Ministry of National Economy](#) (article available in Hungarian), the tax administration law will include general procedural rules, while the Act on Rules of Taxation will contain the specific detailed rules.

Deadlines during inspections may change

Although the current deadlines of the Act on Rules of Taxation essentially define a strict framework for inspections, due to the series of deadline extensions and the procedures not included in the deadline, inspections have, to the point of absurdity, sometimes lasted for years, potentially hindering the disbursement of reclaimed VAT in certain cases. **So the draft sets absolute deadlines by which the inspection has to be completed.** For example, a tax inspection of a company cannot exceed 365 days, while the checking of companies qualified as reliable cannot last longer than 180 days. The deadline for subsequent checks of tax returns (referred to as "tax inspections" in the draft) would still be 90 days by default, but the deadline for the supplementary inspection performed after delivery of the minutes containing the findings, and based on the comments of the taxpayer, would increase from 15 to 30 days. As for taxpayer comments, it is worth noting that the deadline for this would increase from 15 to 30 days in the case of a tax inspection, after which taxpayers lose their right to comment. The question is how this provision could be applied by the NAV in practice, in light of the fact that taxpayers have the right [to make statements](#) during the whole of the procedure.

The devil is in the details

The draft tax administration law includes several provisions and legal institutions modelled on the Ket. These include hearings for example, which are necessary when those participating in a procedure (e.g. witnesses) have to be heard together in order to clarify the facts. The taxpayer subject to the procedure has to be notified of the hearing, who may then initiate a motion for evidence and may ask questions from the person being heard.

The scope of regulations regarding witnesses will also be transferred to the tax administration law. Interestingly, according to the drafts, the call for making statements as per Section 48 of the Act on Rules of Taxation will remain. The witness reports and the statement as per Section 48 of the Act on Rules of Taxation essentially serve the same purpose, i.e. that experiential knowledge can be obtained from people other than the client/taxpayer in question about the facts and circumstances important for the case. The subject of the statement as per Section 48 of the current Act on Rules of Taxation can only be an organisation or private individual that has, or formerly had, a contractual relationship with the taxpayer subject to the inspection. Another important difference to the hearing of witnesses is the taxpayer does not have to be notified of such statements. So the general rule is that taxpayers are only notified in the relevant report of what has been said. It is worth mentioning that the possibility of preliminary notification would return under the plans, in respect of launching inspections, and that the number of specified types of inspections would decrease (e.g. the inspection aimed at collecting data is not separately defined).

Changes for legal remedies

It is definitely reassuring that the basic [legal remedies](#) (appeal, supervisory action, judicial review or public administration lawsuit) will remain. The provision of the draft that limits references to new facts and circumstances at the second-instance tax authority is presumably there to prevent procedures being extended. The draft law on tax administration includes legal institutions related to legal remedies/decision reviews such as reminders and action by the prosecutor, and nullity. These legal institutions potentially modifying and nullifying decisions made during procedures launched ex officio can only be enforced between relatively narrow limits, but if push comes to shove, it is worth considering them too, signalling to the prosecutor for example if we think the tax authority is breaching the law.

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"Every foreign company may assign a representative, but only companies registered outside the European Union are obliged to do so."

**Béla Kovács, WTS Klient Hungary
senior manager**

Source: inforadio.hu



Turn on your radio!



"Hungarian companies that undertake the financial representation of foreign companies must comply with strict conditions" – says Béla Kovács, senior manager at WTS Klient Hungary, who will be talking about the activities and representation of VAT-registered companies on InfoRadio on the evening of 7 September. He notes: financial representatives are jointly and severally liable too, which means the NAV may claim any tax debt of the foreign company from the representative as well.

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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