

## wts klient newsletter

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Dear Readers,

In [our previous newsletter](#) we highlighted our very positive impression of the legislator's efforts to seek provisional opinions during the preparation of legislation. In this newsletter we will talk about another draft decree, for which comments could be submitted until 5 September.

In my article on page 2 I explore the main amendments to the legislation known by professionals as the new transfer pricing decree, and of course, we will return to the final details once the decree is adopted.

I am delighted to present **our international newsletter** as well, which was **published recently on transfer pricing**; among other things you can read on page 7 how Hungary transposed country-by-country reporting (CbCR) into its national rules.

The publication summarising the current situations in more than 10 countries can be downloaded from [here](#) as a PDF.

I hope you enjoy reading the newsletters.

András Szadai  
manager

## Breaching rules on working hours and rest time

Breaching rules on working hours and rest time can result in official action from the authorities, even if only one employee is affected.

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## New transfer pricing decree: administration to change

The transfer pricing decree is being amended, and the required content of transfer pricing documentation will also change. More administration from 2018.

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## Breaching rules on working hours and rest time

## The most common infringements\*

- lack of working schedules
- with cumulative working time systems, the lack of start and end dates defined in writing
- working hours in excess of the highest permitted daily and weekly working hours
- lack of working-hour and rest-time records, or the recording of false data

\* Report of the Ministry of National Economy's Labour Supervision Department, 13 September 2017

- lack of working schedules,
- with cumulative working time systems, the lack of start and end dates defined in writing,
- working hours in excess of the highest permitted daily and weekly working hours,
- lack of working-hour and rest-time records, or the recording of false data.

## No working schedules

According to the report, the majority of the violations can be attributed to the fact that many employers leave it up to their employees to decide which day they will come to work. As a general rule, the rules on working schedules are laid down by the employer. **Employers have to let employees know in writing of their work schedules at least 7 days in advance, and for a period of at least one week.** The written requirement is also fulfilled if the employer discloses the schedule in the normal and generally accepted manner for the workplace (e.g. bulletin board, intranet). For lack of this, the last working schedule applies. If an unforeseen event arises in connection with the employer's business or operations, the working schedule for the given day can be changed at least four days in advance.

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According to the report of the Ministry of National Economy's Labour Supervision Department on the first half year inspection findings of the labour authority for 2017, **the number of infringements regarding violations of working-hour and rest-time rules is declining, but the number of irregularities identified by the authority is still significant.** According to the report published on 13 September 2017, the most frequent violations are:

### With cumulative working time systems, the lack of start and end dates defined in writing

Employers have to determine the start and end dates of cumulative working periods in writing, and disclose them. In this context, **the employer has to define the number of hours to be worked as well**. Failure to do so – as the report says – makes it impossible for the employee and the authority to check the extra work performed over and above the cumulative period and the related compensation. In this case too, this information can be disclosed in the normal and generally accepted manner for the workplace.

### Violating rules on highest permitted daily and weekly working hours and rest-time

Looking at the rules on working hours and rest time, the labour authority focuses in particular on the following:

- maximum 12-hour working period per day,
- maximum 48-hour working period per week,
- at least 11 hours between end of day's work and start of following day's work – as a general rule,
- annual limit for unscheduled, extra work,
- work on Sundays and public holidays,
- two rest days per week,
- amount of normal and extra holidays,
- granting of holiday entitlements.

### Recording working hours and rest time

Employers have to record working hours and rest time. In this context, employers record normal and unscheduled working hours, stand-by time and holidays. It must be possible to use the records to determine the start and end times of normal and unscheduled working hours as well as stand-by duties on an up-to-date basis. Employers can **record** the start and end times of normal and unscheduled working hours by certifying the written working schedule, at the end of the month, and by keeping up-to-date notes of changes. This **employer obligation** also covers agreements on working hours and rest time.

It is particularly important for the employer to have accurate knowledge of working-hour and rest-time rules since failure to comply with these rules can incur action from the labour authority as specified in law.

## New transfer pricing decree: administration to change

### Main parts to documentation

#### Master file

- description of 5 largest products or services
- advance pricing agreements
- description of group financing
- presentation of intangible assets
- presentation of significant acquisitions, takeovers

#### Local file

- management structure
- list of competitors
- APAs not issued by the NAV

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In a previous [article](#) on transfer pricing documentation we looked at the most important changes affecting transfer pricing records over the years. We also intimated in the article that the documentation will have to contain even more information in the future to make tax authority inspections more efficient. **The amendments are already contained in a draft transfer pricing decree, and we look forward to seeing**

**the final wording.** During the amendment to a 2013 decree for example, the draft prescribed very detailed database filtering criteria, but in the final decree, the strict conditions on this filtering were ultimately removed. Let's take a look at the new aspects in the draft.

### What period do the changes to the new transfer pricing decree relate to?

Minister of Finance Decree 22/2009 (X.16) that is currently in force will be replaced by a new transfer pricing decree from 2018. The decree's **provisions must be applied for the first time in relation to documentation for liabilities for fiscal years beginning in 2018**. Comments could be submitted on the draft until 5 September; we are now waiting for it to be promulgated and then, thirty days later, for it to enter into force. The provisions of the new transfer pricing decree may be applied when preparing documentation for tax liabilities in the 2017 fiscal year as well, but only if the preparation date of the documentation is not earlier than the date the decree enters into force.

### What would the new transfer pricing decree change with regard to the documentation content?

The structure of the new documentation would differ from its current form. The ability to prepare independent records would disappear, and be replaced by **records comprising two separate documents**: the master file and the local file.

The content of the **master file** would apply to the group as a whole and comprise detailed information; this would include, but is not limited to, the following:

- presentation of supply chain for the group's 5 largest products and services, and for any product and service whose turnover exceeds 5 percent of the group's turnover, listed based on sales revenue (this will not be easy to identify, or even list, for an entity with several divisions carrying out activities round the world – the only potential relief is that the information can also be displayed in a table or in a chart),
- list of significant, intra-group services,
- intangible assets and related agreements concluded with related companies,
- description of intra-group financing,
- presentation of the group's unilateral arm's length price agreements (APA) in force and other binding ruling resolutions,
- presentation of significant business reorganisations, acquisitions, transactions related to sales of business divisions.

The main and new parts of the **local file** are as follows:

- when presenting the taxpayer, we need to show the management structure, an organisational diagram and the names of the individuals who report to the management,
- the company's main competitors have to be listed (under the current transfer pricing decree, relative competitive positions had to be presented),
- copies of unilateral, bilateral and multilateral APAs and other binding ruling agreements not issued by the NAV have to be included (similar conditions can be found in the current transfer pricing decree, however, binding rulings were not included so far, and ongoing procedures had to be presented too).

### What is good in the new decree?

On a positive note, the records and the underlying documentation **do not have to be prepared in Hungarian**. That said, we still recommend that the documentation be compiled in English, German, French or Hungarian (otherwise the tax authority may ask for the documentation to be translated, possibly resulting in undue additional expense). Similar to the previous rule, the local file must be

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"Exactly when a posted employee has to pay contributions in Hungary must be examined on a case-by-case basis."

**Marianna Fodor, WTS Klient Hungary payroll services – director**

Source: inforadio.hu



### Turn on your radio!



"In the event of a posting, the foreign employee essentially remains insured in the posting country, but this fact must be proven to the authorities of the host country. This is what the A1 form is for" – emphasises Marianna Fodor, Payroll Director at WTS Klient Hungary, who on the evening of 12 October will be talking on InfoRadio about the social security issues of foreigners working in Hungary.

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

Please note that the conversation is available only in Hungarian.

compiled by the submission date of the tax return (but it does not have to be submitted to the tax authority) and the new transfer pricing decree provides an opportunity for the local file to be considered the record for a period of 12 months from the last day of the taxpayer's fiscal year (also bearing the parent company's deadlines in mind), until the master file is available.

### What is the situation with database filtering?

For companies selected as comparables, it will suffice in the future **to carry out database filtering every three years** (the financial data of the companies used for the comparisons should be updated every year), provided that there is no significant change in the business activity over this time. The transfer pricing decree currently in force does not contain any such provision, and updating the financial figures of the compared companies can increase costs. This is because many firms did not deem it important to revise the data of the comparable companies, arguing that the market circumstances had not changed.

### Rising administration?

The primary **goal** of the regulation bringing more administration is to **curb the aggressive tax planning and tax evasion efforts of multinational enterprises**. Alongside the rules of country-by-country reporting, [Hungary has now integrated](#) the rules of master files and local files too. The documentation prepared so far was substantial anyway, but in future, **even thicker transfer pricing records will need to be "produced"**. For example, it can happen that there is no written contract between the parties, but this does not mean that the record does not have to include all the relevant details. The master files to be presented to Hungarian tax inspectors will contain a lot of information that is not relevant at all from the perspective of a Hungarian inspection, but just one piece of missing data can pave the way for a default penalty.

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