



Dear Readers,

Although summer is the season of holidays and relaxation, some newly introduced rules meant we did not have time to sit idle for long: GDPR, online invoicing and 2019 tax laws, to mention just a few of the key milestones.

Besides these, in August we examined several special issues, which, in our experience, are affecting a growing number of companies. In our lead article we take a thorough look at the sanctions of the new Act on Rules of Taxation, especially the default penalty rules.

On page 3 we highlight how a business division can be separated from other activities, what costs are involved, and how long it takes to transfer a business division. We outline the tax payment obligations of companies in relation to foreign postings on page 4. As we often hear about the positive effects of company mergers, on page 6 of our newsletter we elaborate on the possible negative consequences.

Finally, we analyse cases of employment that deviate from employment contracts. My colleague presents the characteristics of atypical employment from a VAT perspective on page 8.

We hope you enjoy reading it, and have a pleasant September.

Andrea Potáßy
partner

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Sanctions of new Act on Rules of Taxation – Default penalty

Guide for default penalties:

- The maximum **general default penalty** is HUF 200,000 (roughly EUR 600) for natural persons and HUF 500,000 (roughly EUR 1,500) for entities
- **A limit of 1 year** for imposing a default penalty (with certain restrictions)
- **Exemption** from legal consequences if tax authority provides incorrect information
- When imposing the penalty, the tax authority looks at the **duration of the violation** and the taxpayer's **general attitude towards complying with the law**

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In the [first part](#) of our two-part series launched two month ago we looked into the changes related to tax penalties and late payment interest, some of the sanctions applied in the new Hungarian Act on Rules of Taxation effective from 2018. In this second part we are looking at the default penalty rules, including cases where the default/violation is due to incorrect information provided by the tax authority.

What are the general default penalty rules?

Unlike the itemised list used earlier, the [new Act on Rules of](#)

[Taxation](#) lays down one general rule in Hungary. Namely, unless otherwise provided for in the law, failure to comply with a tax liability means a penalty of up to HUF 200,000 (roughly EUR 600) can be imposed on natural persons, while the maximum amount for entities is HUF 500,000 (roughly EUR 1,500). There are still **even weightier violations**, for example a penalty of up to HUF 1 million (roughly EUR 3,000) is imposed on taxpayers **pursuing activities requiring a tax number or taxable activities without a tax number** (so they are virtually invisible in the tax authority's system). Penalties are really strict if taxpayers fail to fulfil their obligation to keep records, i.e. they do not keep printed invoices and receipts. In such cases, the maximum penalty amount can reach an amount equalling HUF 500,000 (roughly EUR 1,500) multiplied by the number of missing invoices or receipts.

Reminder to rectify problems

Presumably as part of the [customer-friendly NAV concept](#), even rules effective until the end of 2018 enabled taxpayers not obliged to register a company (mainly private individuals) to be exempt from a default penalty in the event of a [default](#), even if they fail to rectify the problem despite being

called upon to do so by the tax authority. The new Hungarian Act on Rules of Taxation sets obligations for all taxpayers now, **with a mandatory reminder to rectify any deficiencies**. For example, failure to submit a VAT return will entail the tax authority sending a reminder to submit the return as soon as possible. In such cases the tax authority sends two reminders, holding out the option of applying sanctions. It is important to note, however, that if the repeated reminder of the tax authority goes unheeded too, the penalty imposed may not be decreased. This means a penalty of HUF 600,000 (roughly EUR 5,200) for companies.

New assessment criteria for imposing penalties

Based on an assessment of the reasons and circumstances, the tax authority can either impose a penalty in line with the severity of the default and proportional to the conflict of interest, or it can decide not to impose a penalty at all. One new element in the law related to the levying of a default penalty is the **tax authority's assessment of the taxpayer's tax procedures and general willingness to comply with legislation**, either to the advantage or disadvantage of the taxpayer. Another novelty is that the duration of the unlawful conduct is taken into account as an assessment criterion. Under the main rule in the new Act on Rules of Taxation, if the obligation is not duly fulfilled, the default penalty can be imposed several times and at a higher rate. NAV guidance (3006/2018) on the penalties imposed by the tax authority is available [here](#) in Hungarian.

Time limitation on default penalty

There is a time limit for levying a default penalty, which is one year from the date when the tax authority learns about the violation. No penalty can be imposed after this date. However, this provision may not be applied for violations identified during [audits](#).

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



wtsklient.hu/2018/07/19/felteteles-adobirsag-kedvezmeny/
Please note that the conversation is available only in Hungarian.

Exemption from legal consequences if tax authority provides incorrect information

According to the new Act on Rules of Taxation, no legal consequences can be determined to the detriment of taxpayers if – after 1 January 2018 – **they acted according to information disclosed on a page of the tax authority's website created for this purpose**. It is important to note that this rule will not exempt companies from settling tax shortfalls to the tax authority; the tax must be paid even if the NAV provides incorrect information.

Client representation at the NAV

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.

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- » NAV certificates
- » payment relief requests
- » advance tax ruling requests
- » consulting in tax procedural issues and in tax lawsuits
- » EKAER

Latest publications

- » [Sanctions of the new Hungarian Act on Rules of Taxation – Tax penalty and late payment interest](#)
- » [Appeals in tax cases](#)
- » [New draft decree on live invoicing, or online data reporting](#)

Languages

Hungarian, German, English

Business division transfer

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Companies can have diverse activities nowadays. The example below related to a business division transfer describes a company originally involved only in manufacturing that extended its activity to the service sector. If a company is involved in various activities, a potential investor may decide that instead of acquiring the whole company, it would prefer to buy only the business division that fits its profile.

Such cases raise the question of how a business division can be separated from the other activities, what costs are involved, how long it takes for a business division transfer, and what opportunities the [Hungarian tax regime](#) offers to carry out such transactions under beneficial taxation conditions.

Options for transferring business divisions:

- selling assets or properties individually
- transfer of going concern
- preferential transfer of assets
- preferential transformation

Asset sale instead of a whole business division transfer

In relation to the example mentioned above, let us assume that the investor is a large group involved in manufacturing that wants to acquire the manufacturing division of the target company. Of course the target company may sell its assets or even its properties one by one to the investor.

The **advantage** of this method is that **such transactions are simple and obvious** so there is no need for long preparations. It should be considered, however, that a **VAT liability may arise** in Hungary when selling assets, as in the case of [transferring properties](#). Sales can also be subject to corporate tax, while local business tax liability needs to be considered as well.

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



wtsklient.hu/2018/08/02/uzletag/

Please note that the conversation is available only in Hungarian.

Handing over business divisions

From 2013, the VAT Act in Hungary introduced the concept of transfer of going concern which has long been used in international taxation. Accordingly, under certain conditions, handing over a separate business division is out of scope of VAT.

If the package to be sold complies with the concept of transfer of going concern set out in the VAT Act in terms of each detailed rule, for example, it is suitable for long-term independent business activity, **then a VAT invoice does not need to be issued and no VAT is payable on the transaction.**

This solution can be a favourable option as the buyer does not need to finance the VAT related to the transaction, even for a short period. Before a business division transfer it must be examined in detail whether the delivered assets and liabilities fulfil the conditions set for transactions out of the scope of VAT.

Preferential transfer of assets

This type of transaction – a preferential transfer of assets – is regulated by the Hungarian Act on Corporate Tax and is very similar to the notion of a business division mentioned above and regulated by the VAT Act. However, one significant difference is that while a business division can be sold in return for cash, a preferential transfer of assets actually means that the business division becomes a contribution in kind, where the company granting the asset gains ownership in return for delivering the independent organisational unit.

The main advantage of this option is that the **business division transfer is regarded as a neutral transaction for corporate tax purposes** for the delivering party, and so no corporate tax payment liability occurs. In return, however, the delivering party gains partial ownership for the organisational unit delivered, so the construction itself is not flexible and there are various rules to comply with. Yet it can still be an optimal solution for those who wish to place their independent organisational unit into a separate company under neutral conditions for corporate tax purposes.

Preferential transformations

A [preferential transformation](#) (spin-off or separation) can be an option in such cases. As the first step of a preferential transformation, the organisational unit can be placed into a separate company, which, under certain conditions, is **neutral for corporate tax purposes** for the delivering party (preferential). Another important benefit is that **such transactions are duty-free**, provided that the conditions are fulfilled. As transformations require complicated legal, accounting and [tax measures](#), such transactions should definitely be undertaken with care.

Key aspects to be considered for a business division transfer

Besides the favourable tax aspects, there are a number of other factors to be considered when selecting the final framework, two of which are highlighted below:

- **Loss:** Whether the company has any loss carry forward is crucially important, and if so, to what extent the company wishes to use them in the future. In the case of a preferential asset transfer, for example, **the loss carry forward belonging to the independent organisational unit handed over must also be transferred to the target company**, so it may not be used in the future to reduce the tax base.
- **Timeline:** Another aspect not to be underestimated is the duration of the sales transaction. While a simple **asset sale transaction can be concluded in a few days**, the legal, accounting and tax tasks related to a transformation may take half a year.

Financial and accounting due diligence

Business division transfer can also imply risks for the potential buyer and the seller. With our **financial and accounting due diligence** services we help even out the information asymmetry between the buyer and the seller, enabling both parties to have the same information at their fingertips on the business division to be transferred. Feel free to contact us!

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- » VAT-registration of foreign companies and related tax consulting
- » international taxation of foreign workers
- » representation of companies during tax inspections

Latest publications

- » [Hungarian-Turkish social security agreement takes effect](#)
- » [New transfer pricing documentation decree allows for self-revisions](#)
- » [New transfer pricing decree: administration to change](#)

Languages

Hungarian, German, English



So how much do foreign postings cost?

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Reclaiming foreign VAT

- transport tickets, transport hire
- accommodation
- professional programmes, exhibitions, trade fairs,

When an average limited liability company sends its employees abroad for business meetings or training for a few days, several types of cost may incur, which can entail different tax payment liabilities too. Some costs may even be coupled with VAT deduction rights, meaning that a tax refund may be claimed through [foreign VAT reclaim procedures](#) if the company is otherwise entitled to deduct VAT, all the necessary receipts are available, the amount of VAT reaches the minimum threshold, and all other terms defined by various laws and regulations are complied with.

In case of official foreign postings to **EU Member States lasting a few days**, Hungarian employers most frequently find themselves in the following taxation situations.

Pursuant to the Hungarian Labour Code employers are obliged to refund any costs incurred rightfully by employees owing to the performance of their work duties. **Costs may be reimbursed with daily allowances, or with invoices issued to the name of the company, but a combination of the two is also possible.**

Settling costs of foreign postings with a daily allowance

If a limited liability company decides to settle the expenses incurred during foreign postings, in part or in full, by paying a daily allowance, it is worth considering the following.

For domestic postings the obligatory amounts of cost reimbursements are regulated in separate laws, but with foreign postings, especially for an average limited liability company, there are no such laws (international freight carriers and governmental entities, etc. are regulated by such laws). So it is advisable to draw up an internal policy to avoid future legal disputes.

Gross daily allowances granted to employees for the duration of foreign postings are taxable at a similar rate to wages, but when calculating the tax base, 30% of the daily allowance, but no more than EUR 15/day, shall be considered an eligible cost (i.e. deductible from the tax base) without a receipt.

Settling some or all costs of foreign postings by invoice

First and foremost, from a taxation and accounting point of view the importance of having **appropriate documentation revealing the official and business nature of foreign postings** is paramount. This may include many different items, from detailed lists of daily schedules, training contracts, or even emails. During a [tax authority inspection](#) a trip may be reclassified as private from a taxation perspective, and as income not received in cash, with knowledge of the circumstances of the trip (or rather the lack thereof). As a result the incurred costs shall be taxed in the same way as wages paid to employees. A duly completed posting order or an accounting form for travel costs may help a great deal in clarifying the situation.

When using a service,

- company car tax
- personal income tax
- health-care contribution

payment liabilities may also arise.

Secondly, it is also significant that any **incurred expense is supported by an appropriately issued invoice or accounting documentation**, which bears the name of the company. This is often not an easy task abroad.

Form of travel

The outbound and inbound journey can be arranged using several means of transport. **In the case of air travel, trains or buses**, it is generally possible to **reclaim tax** in the form of a foreign VAT refund, if the invoice received from the other EU Member State includes VAT (typically if the invoice only covers the journey within the given member state).

When travelling by **car**, certain regular tax payment obligations and tax deduction bans are to be met in connection with any vehicles otherwise used by the company. If the company hires a car from a separate company for a specific journey, it is important to know that the car rental company **pays the company car tax** in the case of a domestic hire, but it is the **company hiring the car that pays in the case of a rental abroad**. Based on travel records the VAT on the car hire may be reclaimed in proportion to the actual business trip according to Hungarian legislation. With an invoice including foreign VAT, local legislation may restrict the amount of refundable VAT – through a foreign VAT reclaim – in the given country.

Employees can also use **their own vehicles** for the trip. The costs here can be reimbursed in multiple ways. No tax payment liability is applicable if the employer company pays travel expenses for private individuals using their own personal vehicles based on the mileage, the fuel consumption standard and no more than the fuel price published by the State Tax and Customs Authority plus HUF 15/km as the general standard cost of passenger vehicle use, duly documented in a travel order.

Beside the flat rate payment described above, an **itemised settlement of costs** is also possible, **but do not forget that in this case a company car tax payment liability also arises**. Company car tax shall be paid on a monthly basis and not prorated. Under Hungarian legislation the VAT paid on the fuel consumed by the passenger vehicle may not be reclaimed.

Accommodation costs

During foreign postings, staying in hotels often entails other expenses as well (e.g. meals, telephone/internet charges, parking). **In the case of hotel services, tax may be reclaimed** in a foreign VAT reclaim procedure **for some services**. **Meals** on official business trips **are taxable as other benefits** (personal income tax, healthcare contribution). The cost of breakfast included in the accommodation price, however, is exempt from this rule, but according to a [NAV opinion](#) (available in Hungarian) this only applies if it is not invoiced separately. It can happen that 20% of telephone charges is also taxable under the title of other benefits, but this amount is generally negligible.

Official professional programmes

Foreign VAT may be reclaimed on **exhibition, trade fair, conference and training fees** if they constitute part of an official professional programme; no further tax payment liability arises since the employee received no benefits.

Long-term foreign postings may give rise to further [labour law](#), [personal income tax](#) and [social security](#) issues.

Accounting advisory

If you need further taxation or [accounting information](#) on foreign postings, please do not hesitate to contact us.

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Likely negative tax implications of mergers

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Mergers might have negative impacts on taxation for certain tax types:

- Rehabilitation contribution – the exemption threshold can easily be exceeded in a merger
- Innovation contribution – companies previously exempt individually might be subject to the contribution after the merger
- Local business tax – the calculation method will likely become more complicated

Several of our articles have dealt with the reasons for transformations and the [challenges](#) involved in Hungary, including related [accounting procedures](#) and [taxation issues](#). Generally speaking, the motivation behind mergers is mainly driven by expectations to reduce costs.

For example, in a group consisting of five companies, the same type of tax return must be submitted five times, tax inspections may be expected for each of the five companies, and five financial statements need to be audited and published. Potential issues need to be multiplied by the number of the companies in a group. Of course, this does not automatically mean that preparing and submitting the returns takes five times as long, or that the preparation costs are five times higher than in case of one return.

We also need to keep in mind that if the relevant conditions are met, [transfer pricing documentation](#) must be prepared in relation to transactions within the group. However, following a merger of a company group, these transactions are considered "in-house", so transfer pricing is obviously not applicable, and the company no longer needs to deal with preparing the documentation. It is easy to see that **the more companies are involved in a company group, the higher the administrative costs are to maintain the company, and vice versa.**

Yet besides the many positive impacts, there is generally less mention made of the unfavourable changes a group may face as a result of a merger. We should also talk about such negative consequences.

What are the negative consequences of a merger?

Besides the advantages described above, or in addition to these, creating a single legal entity from separate companies belonging to a group has certain effects that might have a negative impact on the group. These aspects also need to be assessed to make a thorough and informed decision.

These **unfavourable impacts mainly occur regarding the taxation** of the company established as a result of the merger, particularly if the newly formed company exceeds the thresholds for certain taxes, while the previous companies were all below that threshold.

Innovation contribution

According to current Hungarian regulations, whether a company is subject to the innovation contribution depends on the **size of the individual company** and not the size of the company group. So it can easily happen that if several companies qualifying as SMEs and exempt from the innovation contribution merge, the newly formed company may be obliged to pay an innovation contribution. Besides the contribution, we must not forget to declare and pay the tax advances too.

Rehabilitation contribution

Although with different thresholds, the same applies to the rehabilitation contribution. In Hungary **no rehabilitation contribution is payable by companies with less than 25 employees**. For example, in the case of a merger of two companies with 15 employees each (ignoring the employment of disadvantaged workers here), the new company must take this cost item into account.

Local business tax

As regards local business tax, the concept that fewer companies mean fewer returns does not apply. On the contrary, in this case "sometimes less is more". The number of returns is reduced if the companies involved in the merger pursue their activities in the same municipality. However, **the number of returns does not change if there are various branches**. Moreover, due to the rules concerning tax division, determining the tax rate becomes more complicated so this approach does not help simplify matters. Additionally, due to the progressive nature applicable to the cost of goods sold as a tax base deductible, if the sales revenues of the individual companies are under HUF 500 million (roughly EUR 1.5 million) separately, but together they exceed this threshold, then **the tax rate also increases** compared to the rate the companies would have had to pay together before the merger.

Transfer pricing documentation

Although the obligation to prepare transfer pricing documentation no longer applies for the companies as transactions move in-house due to the merger, **the amount of the transactions in relation to companies not involved in the merger will be added together**,

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



wtsklient.hu/2018/08/16/szinergiak/

Please note that the conversation is available only in Hungarian.

which could mean that transfer pricing documentation will be required with other (related) companies.

Although the impact of the taxes mentioned above is generally negligible compared to the positive impacts of the merger, in certain cases it can reach a level that may cause the owner of the group to rethink the transformation.

Restructuring management

To ensure successful long-term operations on the market, it is crucial that a company redefines its structure and operation from time to time, either entirely or focusing on certain elements. Within the framework of our restructuring management services, WTS Klient Hungary is at your disposal to give advice regarding the transformation of your company, including a thorough examination of the possibility of a merger.

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Languages

Hungarian, German, English

Latest publications

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- » [Financial diagnostics: are the finances of your company in order?](#)
- » [Internal financing: financing using own resources](#)

Employment deviating from employment contracts

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An employer at any company may decide to employ someone temporarily in a manner deviating from employment contracts, in another position (reallocation), at another workplace ([secondment](#)) or at another employer (temporary assignment). This option is provided for in Section 53 of the Act on the Labour Code (Hungarian Labour Code). However, there are specific cases when the **employee's approval is essential for employment in another location**. The Hungarian Labour Code provides an itemised list of these cases.

Cases of employment deviating from employment contracts

- reallocation
- secondment
- temporary assignment

Position or workplace deviating from employment contracts

The **maximum duration** of employment deviating from employment contracts is **44 working days per calendar year for the position**. In certain cases, for example, when the employment starts during the year, this rule must be applied proportionally. For employment deviating from employment contracts that exceeds the duration set forth by law, the given employment contract must be amended. The employee must always be informed about the expected duration of the employment deviating from employment contracts.

When employing someone in a position **deviating from employment contracts**, the employer instructs the employee to perform tasks related to a different position, but if the **work is performed in a different workplace**, the tasks remain the same, just the place of work changes. In both cases the work is performed under the direction of the employer, there are no changes in payroll or accounting.

Temporary assignment: employment at a different employer

However, **employment at a different employer** means that the employee is temporarily subject to the direction of another employer. It is advisable to specify the details of this legal relationship in an agreement between the two employers, in which issues related to sharing the exercise of employer's rights, the duration of the secondment and settlements between the two parties should be included. The seconding employer still prepares the payroll, pays the salary of the employee, as well as declaring and paying the taxes. Wage costs, related taxes and contributions are recorded in the books and accounting records as usual.

An employee cannot be seconded for some form of consideration, but this implies a possible tax risk. This is why it is **important to examine the issue in advance from a corporate tax and VAT perspective too**. Of course, one of the employers may also ask the other to reimburse the costs incurred. Such compensation must be booked as other revenue, while the other employer should classify it as other expense.

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"Error messages can cause serious headaches for accountants, or even managing directors."

Tamás Gyányi, WTS Klient Hungary partner

Source: inforadio.hu



Have you heard?



"Although the default penalty for incorrect, delayed or incomplete online data reporting is significant after the end of the grace period, amounting to as much as HUF 500,000 per invoice, you also need to be aware that the NAV acts fairly with its sanctions, and examines whether the taxpayer did all it could during preparations to avoid a penalty", says Tamás Gyányi, partner of WTS Klient Hungary. On InfoRadio on 23 August the expert was discussing the operation of the online data reporting system two months after its launch, and how the NAV has been applying its penalties since the grace period expired on 31 July.

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

Please note that the conversation is available only in Hungarian.

Employment at more than one employer at the same time

A distinction should be drawn between employment deviating from employment contracts and atypical employment, where one of the forms involves the **employee being employed by more than one employer**. It is very common for several companies in the same group to employ the same person in certain positions, like accountants or receptionists, etc., within the framework of the same employment relationship. Section 195 of the Hungarian Labour Code enables several employers and the employee to enter into an employment contract for the performance of tasks pertaining to the same position. The Hungarian Labour Code does not restrict this form of employment to related parties only, **completely independent employers can also apply this legal tool**.

For employment relationships established by more than one employer, aside from the general rules the employment contract has to state which employer pays the salary. Upon entering into the employment relationship, both employers must record in writing which employer is responsible for the tax liabilities, and inform the employee of the designated employer. Based on this rule we can say that the provision of information by the employers is particularly important in such cases of atypical employment. **Employers are liable for wage costs and related public dues proportionally, as agreed**, so both companies record the appropriate proportion as a wage cost or wage contribution in their books. (Information about the tax on employment by several employers is summarised by the Hungarian Tax Authority in tax guideline 2013/28.)

Agency work

Another case of atypical employment is **agency work**, where the agent releases one of its contracted employees to a client on a temporary basis for work purposes and in return for a fee. According to Section 142 of the Act on VAT, reverse charge applies to such activities and they are subject to authorisation.

Labour law consulting

If a company wishes to choose one of the employment options above, or any other atypical employment alternative, it is advisable to consult with a [labour lawyer](#) and a tax advisor. The professionals at WTS Klient Hungary are here to help.

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Latest publication

- » [What does electronic communication mean from the perspective of local business tax returns?](#)

Languages

Hungarian, German

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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.

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