

# wts klient newsletter

WTS Klient. **The Bridge.**

## Dear Readers,

It's been an exciting and busy summer. We were able to return to the office as the coronavirus pandemic restrictions were eased, albeit not at full capacity given the summer holidays and the still careful approach needed, and have met with colleagues again, with each other, and with you, our clients. Although strictly outdoors, on our office's popular round terrace, a good number of us were able to gather together for the first WTS Klient Healthy Hours, where we celebrated our sporty colleagues in the sunshine, with colourful and sweet summer fruits and a real medal ceremony. These colleagues didn't relax during the lockdown, instead they ran, cycled, swam and trekked to reach the 15,035 km distance between Budapest and Tokyo before the Tokyo Olympics began. And of course, we followed the European Football Championship, adding to the fun with our traditional sweepstake.



Aside from all this, the summer was not boring from a business perspective either. Four WTS Global newsletters appeared in two months, and the International Tax Review published its shortlist for the best tax advisory firms in Europe this year, with WTS Global and its member firms occupying twenty places in total, including WTS Klient in the category of transfer pricing firms.

Our experts publishing professional articles have been busy too. In this newsletter we report on the changes to the requirements of lawful employment conditions and the easing of online data reporting for proxy invoicing, including self-billing. On pages 5-7 you can read about the definitions for registered office, permanent establishment, branch office, document storage location and place of central administration, along with the related reporting obligations, and we look at how the rules on registered office services have been tightened since 10 June. Our last article turns the spotlight on the latest changes connected to VAT refunds on irrecoverable debts.

As ever, we hope that you will find this newsletter useful and that our articles help your company operate efficiently and smoothly - whether your questions concern tax, accounting or labour law issues.

On behalf of everyone at WTS Klient Hungary, I hope you enjoy reading it and I wish you the best of virus-free success in the forthcoming autumn period:

**Andrea Pásztor**  
partner



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## EMEA Tax Awards 2021: WTS Klient makes the final



The EMEA Tax Awards (Europe, Middle East and Africa Tax Awards) is the name given by the reputed tax journal, International Tax Review, to the European tax competition of the best tax advisory companies in Europe, expanded this year to include the Middle East and Africa. WTS Global made the final in two categories - transfer pricing firm of the year and indirect tax firm of the year. Member firms of the network took up a total of 17 places on the shortlist. WTS Klient is up against four rivals for the title of best Hungarian transfer pricing firm of the year.

## Changes to requirements regarding lawful employment conditions

New rules entered into force in Hungary on 11 March 2021

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From 11 March 2021, Government Decree 115/2021 (III.10) on the activities of the employment supervisory authority sets forth the detailed rules for the requirements of lawful employment conditions.

Section 50 (1) of Act CXCV of 2011 on Public Finances (Public Finances Act) stipulates that **budgetary subsidies may be granted to Hungarian entities that** – among other things – **meet the requirements of lawful employment conditions**. From 11 March 2021, **Government Decree 115/2021 (III.10)** on the activities of the employment supervisory authority (hereinafter: Government Decree) sets forth the detailed rules for the requirements of lawful employment conditions.

### Which infringements violate the requirements of lawful employment conditions?

For the purposes of the Public Finances Act, the requirements of lawful employment conditions are **not complied with** if the employer was fined

- by the Hungarian tax authority or the employment supervisory authority for **failing to meet the data reporting obligation** regarding the establishment of an employment relationship as defined in the Act on Rules of Taxation or the Act on Simplified Employment,
- by the employment supervisory authority
  - » for **infringing the provisions regarding** age for establishing an employment relationship and the **prohibition of child labour**,
  - » for **infringing the provisions on salaries and wages** pursuant to the Act on Employment,
  - » for **violating the rules on recording temporary employment activities**, or
- by the authority supervising the implementation of the equal treatment requirement under the Act on Equal Treatment and the Promotion of Equal Opportunities for **violating the requirement of equal treatment**

in a final, enforceable and published public administration decision (upon the first legal infringement too) – included in a final

decision of the court in the case of a public administration action – within two years of claiming the budgetary subsidy.

Furthermore, the requirement of lawful employment conditions is not met if the employer was fined as a result of **employing citizens from third countries without** a work permit or a combined permit issued during a permit procedure conducted to facilitate gainful employment pursuant to the Act on the Admission and Right of Residence of Third-Country Nationals in Hungary, in a final, enforceable and published public administration decision (upon the first legal infringement too) – included in a final decision of the court in the case of a public administration action – within two years of claiming the budgetary subsidy.

### What documents can verify compliance with the requirements of lawful employment conditions?

As a rule, the following documents facilitate confirmation that lawful employment conditions have been fulfilled:

A document containing data published from the registers of

- the Hungarian tax authority,
- the employment supervisory authority,
- the authority supervising the implementation of the equal treatment requirement.

### Request for deletion of data published based on the official register kept by the employment supervisory authority

For decisions falling within the general competence of the employment supervisory authority, with the exception of labour fines levied because of employing citizens from third countries without a work permit, the Government Decree **allows employers to request the deletion of its data published in connection with an infringement decision once per calendar year**, before the expiry of the two-year publication deadline, provided that

- it submits a deletion request to the employment supervisory authority,
- it pays the amount specified in the Government Decree, which is three times the amount of the fine pertaining to the deletion request, but at least three times the number of employees affected by the infringement multiplied by the minimum wage,
- the content of the published decision has been enforced voluntarily and completely, and the labour fine paid.

### Labour law consulting

If you have further questions as an employer on whether the lawful employment conditions requirements are fulfilled at your company, or if you need a legal expert to delete your data published with regard to the infringement decision, the [lawyers working with WTS Klient Hungary](#) are happy to help the clients of our group.

## → Our expert



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- » corporate and economic law
- » M&A
- » property law
- » labour law
- » competition law

#### Languages

Hungarian, German, English

#### Latest publications

- » [New rules of cross-border postings in the Hungarian Labour Code](#)
- » [Employers initiating a re-view of incapacity to work](#)
- » [Keeping records of personal data breaches](#)



## The latest WTS Global Customs and ICT Newsletters have been released



The second WTS Global Customs Newsletter this year shares with you news on trade and customs developments from all over the world and reflects the typical issues that we see discussed internationally. You can download the newsletter in PDF format here: [WTS Global Customs Newsletter #2/2021](#)

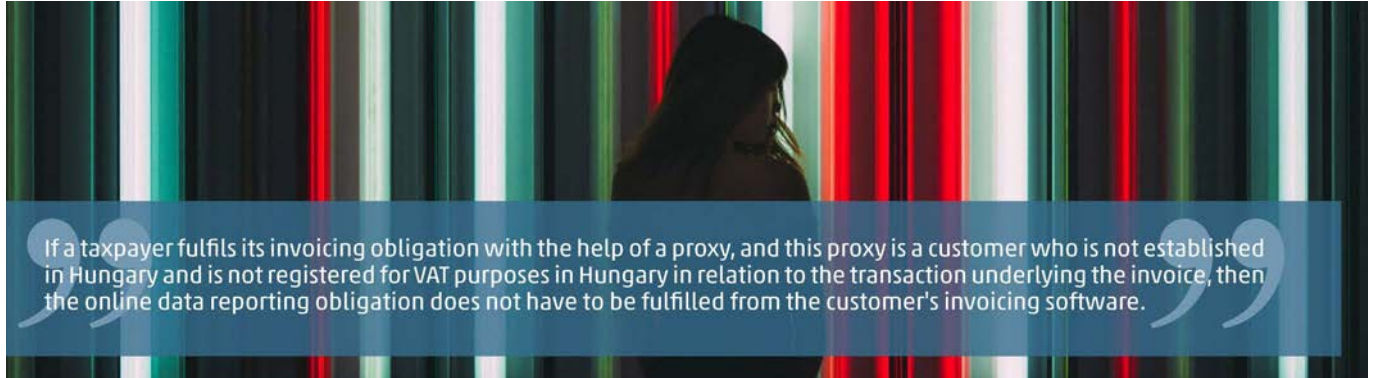


The first WTS Global International Corporate Tax Newsletter this year focuses on changes in international tax law and country-specific tax law developments with respect to cross-border transactions. You can download the newsletter in PDF format here: [WTS Global ICT Newsletter #1/2021](#)

## Good news for those who opt for self-billing!

### Changes to online data reporting obligation for invoicing

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Decree 6/2021 (VI.25) PM published in the Hungarian Gazette on **25 June 2021** puts an end to the problems arising in connection with online data reporting for proxy invoicing, including self-billing. The **decree** modifies (among other things) Section 13/A of Decree 23/2014 (VI.30) NGM on the tax identification of invoices and receipts as well as the tax authority inspection of invoices stored in electronic format, and adds two additional paragraphs. **In the case of self-billing, the change brings some relief related to the online data reporting obligation**, i.e. when the foreign partner issues invoices on behalf of the taxpayer performing the sales.

#### Self-billing with a foreign partner

In addition to Hungarian domestic VAT transactions, self-billing is a common method for cross-border transactions. In these cases, **the foreign buyer issues the invoice for the Hungarian purchase on behalf of its supplier**. According to the rules on online invoice data reporting in force from 4 January 2021, from that date onwards both Community supplies and export invoices are subject to the reporting obligation (in addition to sales to private individuals). We discussed this [earlier](#).

#### What is the challenge?

According to the relevant rules, **it is essentially the taxpayer in the other country who is required to fulfil the online invoice data reporting obligation**, while the partner issuing the invoice and the taxpayer assigning this task are jointly and severally liable for any failures. However, the fulfilment of this obligation and **its practical implementation raise a number of issues**. For

example, one of the most common questions related to the online data reporting of self-billing is whether it is necessary to implement any IT development in the foreign partner's invoicing software so that it can provide data on the invoice to the Hungarian tax authority, or do the supply chain and invoicing procedure have to be completely reconsidered?

#### Temporary grace period for penalties

The Hungarian authority recognised the complexity of the issue related to self-billing, and as a result, the Ministry of Finance extended the moratorium **until 30 June** for cases where the invoice is issued by the buyer on behalf of the distributor, by agreement with the buyer of the product, provided that the buyer of the product is not established in Hungary for economic purposes, while it does not, and does not need to, have a Hungarian tax number. Up to now, **the Hungarian tax authority has therefore refrained from imposing any default penalties** if the taxpayer obliged to provide the invoice data has not, or not properly, complied with the online reporting obligation. Both the legislator and the taxpayers and their partners involved in self-billing were given some time to work out a solution.

#### What has changed with this amendment?

The solution was finally reached by the end of June. According to the legislative amendment that entered into force on 26 June, **if a taxpayer fulfils its invoicing obligation with the help of a proxy, and this proxy is a customer who is not established in Hungary and is not registered for VAT purposes in Hungary in relation to the**

transaction underlying the invoice, **then the online data reporting obligation does not have to be fulfilled from the customer's invoicing software.** The data reporting obligation may also be fulfilled from another computer system, provided that it is carried out electronically via a machine-to-machine connection. The data must be provided within six days following the issue of the invoice or document qualifying as an invoice.

### Tax consulting

If you want to know how your company will be affected by the changes in the online data reporting of proxy invoicing, including self-billing, please contact [the tax experts at WTS Klient Hungary](#).

## → Our expert



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- » international taxation of foreign workers
- » compliance, preparation of tax returns in all taxes
- » VAT-registration of foreign companies and related tax consulting

### Latest publications

- » [New Act on Social Security takes effect on 1 July in Hungary](#)
- » [Brexit effects on social security](#)

### Languages

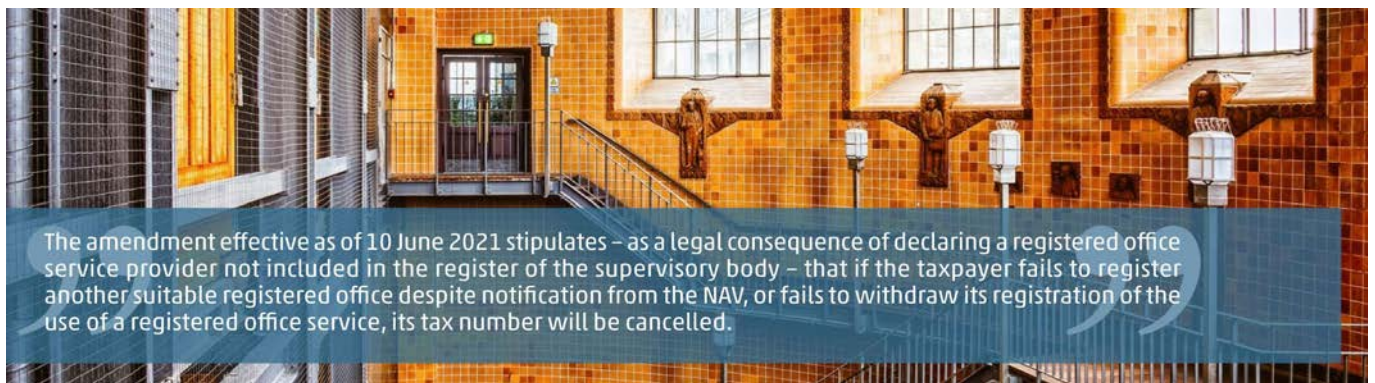
Hungarian, English



## Registered office, permanent establishment, branch office, document storage location, place of central administration

Rules tightened for registered office services from 10 June 2021

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Registered office, permanent establishment, branch office, document storage location, place of central administration – terms which nearly all Hungarian businesses have encountered and are familiar with. Or maybe not? These frequently used terms have become part of everyday life for businesses, yet **they need clarification and the related reporting obligations, if any, must be highlighted.** On a related note, it is also important to mention that as part of the [spring tax law amendments](#), the rules for registered office services were tightened as of 10 June 2021.

### Registered office

The definition of registered office, permanent establishment and branch office are set out in Section 7 of Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings (Companies Act).

The registered office is **the company headquarters entered into the company register.** It is the company's mailing address, the place

where its business and official documents are received, filed, safeguarded, archived, and where the obligations set out in specific other legislation for corporate headquarters are satisfied. **The company must display a signboard or at least a mailbox to indicate the registered office.** For the purpose of company registration procedures, the registered office is also the [Hungarian branch office for foreign companies](#), the direct commercial representation of foreign entities and the permanent establishment for European Economic Interest Groupings.

As a general rule, a company is only entitled to designate a property in the articles of association as its registered office – as well as a permanent establishment or branch office – that it either **owns or** has the right to use based on an agreement. Such an agreement may be a **contract for rent or a contract for registered office services.**

### Registered office services

In line with the Act on Rules of Taxation in Hungary, the **use of registered office services must be reported to the National Tax and Customs Authority (NAV)** if the legal relationship for registered office services was established or changed after 1 January 2017.

Self-employed persons must make a written declaration on the use of registered office services when they register at the NAV. Taxpayers registering through the court of registration must also declare the use of a registered office service in writing directly to the NAV within 15 days of the date of registration. Registration and change reporting may be submitted **on forms 'T101E and 'T201T.** When using such services, entities must report the name, registered office and tax number of their registered office service provider, as well as the start date and, in the case of a fixed-term engagement, the end date of the legal relationship.

Based on Hungarian Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing, **only service providers that have reported their activities to the designated supervisory authority may provide registered office services.**

The [amendment](#) effective **as of 10 June 2021** stipulates – as a legal consequence of declaring a registered office service provider not included in the register of the supervisory body – that if the taxpayer fails to register another suitable registered office despite notification from the NAV, or fails to withdraw its registration of the use of a registered office service, its **tax number will be cancelled.**

Let us look at the details of the above rule. If the taxpayer declares a registered office service provider not listed in the supervisory body's register, the NAV will call on the taxpayer to declare another suitable registered office or to withdraw the registration of the registered office service used. The amendment allows for this because **in a significant number of cases, taxpayers do not declare** a contract for registered office services in accordance with the regulations, but rather **a simple contract for renting real estate.** In this case, there is no reason to require the taxpayer to register another, suitable registered office, it simply needs to withdraw the declaration of the incorrect registered office service (within 15 days). If the taxpayer does not comply with the request, its tax number will be cancelled.

The tax number cannot be cancelled if the taxpayer has restored the legally compliant status before the decision to cancel the tax number becomes final.

### Permanent establishment

According to the Hungarian Companies Act, a permanent establishment of a company is a place set out in the company's articles of association where it carries out its activity and is a permanent and independent establishment **located in a different place but in the same municipality as the registered office.** If the company has a permanent establishment or a branch office, it must be entered into the business register.

In practice, therefore, any place where a company performs business outside its registered office is considered a permanent establishment.

### Branch office

A branch office of a company is a permanent establishment that is **located in a different municipality or** (in the case of a branch office of a Hungarian company abroad) **possibly in a different country than the registered office.**

### Document storage location

The document storage location is the place where the documents, records, declarations, accounting and tax documents relevant for fulfilling the company's tax obligations are [kept and stored by the business owner.](#) The company must notify the tax authority of this place or places, which can be done using the 'T201T or 'T201 forms. It is important to note that **no PO Box can be specified as a document storage location.**

If, in accordance with the Hungarian VAT Act, the business keeps documents, books or records that qualify as electronic invoices electronically, ensuring online access, this must also be reported to the tax authority on the 'T201T or 'T201 forms.

The **documents** may be stored at or transferred to another location only for the duration of accounting and data processing, but **in the event of a tax inspection, they must be presented within three working days of the tax authority's request.**

### Place of central administration

The place of central administration is the place **where the administration, management and decision-making relating to the activities and operation of the business actually take place.**

According to the Hungarian Corporate and Dividend Tax Act, the place of management is the place where the management is set up to manage the business.

The company's articles of association may also stipulate that the registered office is the place of central administration (decision-making) too. Where the registered office is not the same as the place of central administration, the place of central administration must be **indicated in the articles of association and the registration of the place of central administration in the company register**

must be requested. The transfer of the actual place of management abroad must be reported to the tax authority on the 'T201T or 'T201 form.

Nowadays, it is becoming increasingly common for a **foreign company to move the place of central administration of its Hungarian subsidiary abroad**, where decisions relating to the activities and operation of the company are actually made. However, these decisions have **corporate tax implications**, so in such cases it is worth consulting a tax adviser to help the company take the necessary steps and minimise the tax risk.

### Accounting advisory

Although in simpler cases businesses do not have a branch office and their places of central administration and document storage are the same as their registered office, in practice – and in most cases – these are often separate. The different addresses of the company must be registered at the Hungarian authorities and must also be considered for taxation. If you have [accounting questions](#) related to the registered office, registered office services, various permanent establishments or branch offices, feel free to contact WTS Klient Hungary.

## → Our expert



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### Specialisations

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- » IFRS
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### Languages

Hungarian, English

### Latest publications

- » [Normal financial year or different financial year?](#)
- » [Accounting policies: guidelines for accounting transactions at companies](#)
- » [Significant or not significant error? That is the question...](#)



## The latest WTS Global TP and Financial Services Newsletters have been released



In the second edition of the WTS Global Transfer Pricing Newsletter in 2021 WTS experts from 16 countries provided an update on recently introduced legislations and cases, specifically the adoption of certain OECD guidelines. You can download the newsletter in PDF format here: [WTS Global TP Newsletter #2/2021](#)



The latest WTS Global Financial Services Newsletter presents news from 15 countries about tax developments affecting the international FS industry in Europe and India. You can download the newsletter in PDF format here: [WTS Global Financial Services Newsletter #2/2021](#)

## Current developments in Hungary regarding VAT refunds on irrecoverable debts

Reclaims for certain expired transactions also now possible

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Although taxpayers have to follow a detailed system of conditions and procedures defined by law when enforcing their irrecoverable receivables entitling them to a tax refund, full compliance with these does not necessarily result in a simple and quick approval of the request by the tax authority.

Both in the legislative and enforcement fields, much has happened since the Court of Justice of the European Union [issued an order in the PORR case](#) on 24 October 2019 in respect of VAT refunds on irrecoverable debts. This is because the order originally paved the way for taxpayers to reclaim VAT that was paid to the state for domestic transactions subject to direct taxation, but which could no longer really be recovered due to the customer's insolvency.

### What do you need to certify regarding the irrecoverable nature of trade receivables?

In Hungary, tax refunds are always based on proof that [trade receivables are definitely irrecoverable](#). In most cases, the starting point is the **so-called certificate of irrecoverability issued in liquidation proceedings** against the buyer, along with the fact that at least two years have passed since the start of the liquidation.

### Exactly what is the procedure for claiming VAT refunds on irrecoverable debts in Hungary?

If a claim meets the conditions above, taxpayers can easily find themselves in a maze when seeking the answer to the question of exactly which procedure to use to enforce their VAT refund request.

The response can essentially be divided into two questions:

- Whether the **limitation period** for the underlying trade receivable **has already expired**, and
- If yes, **how much time has passed** since this status of definitive irrecoverability was reached?

If the underlying domestic supplies of goods and services subject to direct taxation were performed **after 31 December 2015**, the VAT refunds on irrecoverable debts can be **initiated by means of a self-revision** submitted for the original tax return period.

If the **limitation period** of the original transaction giving rise to the taxpayer's receivable from the customer **has already expired**, according to a relatively new amendment of legal regulations it is still possible for the VAT amount unpaid by the customer to be refunded. In this case, the claim is not enforced via a self-revision of the original tax return, but by a **written request submitted to the tax authority**. VAT refunds on irrecoverable debts expired in this way have been made possible by a recent decision of the Court of Justice of the European Union in a Hungarian case.

It is important to emphasise that based on the legal regulation adopted as a result of the decision of the Court of Justice, VAT refunds on irrecoverable debts that have expired are only possible within certain limits. **In light of the relatively long time it takes for the National Tax and Customs Administration to assess a VAT refund request, and the short filing deadlines (limitation period) for taxpayers, all taxpayers are advised to identify any expired trade receivables as soon as possible.**

### What pitfalls can taxpayers expect during the procedure?

Although taxpayers have to follow a detailed system of conditions and procedures defined by law when enforcing their irrecoverable receivables entitling them to a tax refund, experiences of the past period show that full compliance with these does not necessarily result in a simple and quick approval of the request by the tax authority.

In adopting negative decisions regarding VAT refunds on irrecoverable debts, the tax authority regularly argues that **the taxpayer did not do everything to ensure that the claim does not become irrecoverable**. In this respect, during a detailed investigation of the facts underlying the request, the tax authority may reveal (real or perceived) deficiencies in the taxpayer's claim enforcement procedure which, according to the tax authority's interpretation, renders the taxpayer's procedure non-compliant.



For example, in a given case, in relation to the non-paying customer the Hungarian tax authority would have expected the taxpayer to terminate the agreement with the customer even after the first unpaid invoice, which, obviously, cannot be a viable option for long-term cooperation between business partners.

**Presumed damage to the state budget** is also a frequent argument. According to the tax authority's interpretation here, if the taxpayer requests the refund of a tax where **the taxpayer itself contributed** to the amount being irrecoverable due to shortcomings in the claim enforcement procedure (e.g. missed checks when selecting the contractual partner, etc.), then they cannot transfer the resulting financial risk to the budget. We believe this is not necessarily a valid argument either, since the Hungarian taxpayer was obliged to pay both the relevant VAT amount and the corporate tax on sales as well as the local business tax to the budget, even if the customer did not pay the invoiced amount.

### Value added tax consulting and compliance work

Although our experience shows that the arguments summarised in our article can be successfully defended or refuted in most cases, it is definitely worth involving a tax consultant in the early phase of the claim enforcement to develop a more efficient strategy in line with the individual trade receivable. If you wish to know when and how VAT refunds on irrecoverable debts are possible in connection with your receivables, please contact the [VAT experts of WTS Klient Hungary](#).

## → Our expert



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- » value added tax planning (supply chain management)
- » compliance services in VAT and PIT matters
- » tax authority inspections, tax litigation

### Latest publications

- » [VAT obligation for free of charge supplies](#)
- » [DAC6 data reporting deadlines may be extended by six months](#)
- » [DAC6 – you might be affected, even if you wouldn't think so](#)

### Languages

Hungarian, German, English

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.

Services of WTS Klient Hungary:

- » Tax consulting
- » Financial & accounting advisory
- » Legal consulting
- » Accounting
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