wts klient newsletter

WTS Klient. The Bridge.

Dear Readers,

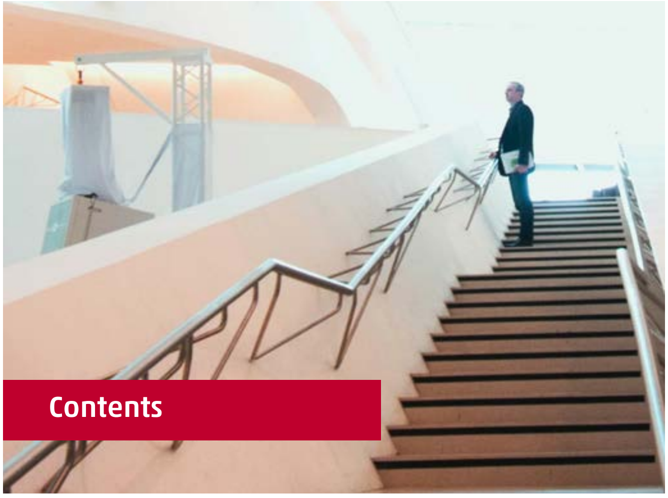
Last week, in keeping with traditions, we held the annual conference of our network, the WTS Global Summit, on the day after the WTS Global Tax Directors Meeting. This time round the conference was held in a hybrid format – the presenters were there on the podium in person, with all the other participants joining in online. This fact alone undoubtedly shows how the pandemic and the digitalisation of the world have transformed our lives, business and work processes, and continue to do so. There were many topics and things to discuss, marking the swift changes and rapid digitalisation as well as our growth that is largely attributable to this. WTS Global welcomed three companies (Consulthink, Fidal, Renmere) as new members at the event, and the addition of Matthias Lichtblau to the team as a chief operating officer is also a demonstrative sign of the network's growth. In the meantime, we cannot complain here at WTS Klient Hungary either, as in recognition of our quality service we were again included among the excellent tax advisers by the International Tax Review in its annual rankings.

This recognition is due, among other things, to our excellent staff who, alongside their dedicated work and professional virtues, once again also demonstrated their stamina with amazing sporting achievements. Besides the team-building contests at the WTS Klient Sports Day, which we finally managed to hold after two years, at the RedShoes StepCount Challenge, WTS Global's virtual competition, our colleagues that registered managed to accumulate almost 2,750,000 steps in just two weeks, thereby beating all the member firms in the network from around the world.

Even with all these activities, we were still writing diligently for you. As ever, we contributed to the two most recent WTS Global newsletters, the WTS Global VAT Newsletter #3/2021 and the WTS Global Financial Services Newsletter #3/2021, and we added to a new niche publication for the network, the Taxation of Artwork Guide. Not to mention this newsletter as well. Our first article reports on the much-awaited e-VAT changes, but we also cover issues such as cash payment limits as well as reporting and due diligence obligations. In the article starting on page 5 we turn the spotlight on policies governing company operations, while our last article responds to questions about permanent establishments required due to cross-border services.

We hope you enjoy reading it, and please get in touch if you have any further questions on these topics.

Zoltán Lambert
managing partner



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International Tax Review 2022 rankings announced

For the fourth year in a row WTS Klient Hungary has again been ranked in the "Tier 2" category of the latest World Tax and World TP publications of Euromoney Institutional Investor PLC and the world's most acclaimed magazine on tax, International Tax Review, signifying excellent ratings in both rankings. In the World Tax 2022 ranking, WTS Global member firms have been ranked "Tier 1" and "Tier 2" overall 54 times. For more information click here.

eVAT – introduction of draft VAT returns delayed

Use of first draft only possible from 12 November

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Pursuant to Government Decree 429/2021 (VII.16), the roll-out of draft VAT returns has been switched from the previously set July-deadline to the tax assessment period starting on 1 October 2021. This means that the first draft tax returns will be available from 12 November.

As we wrote in an earlier article, based on the bill submitted last October and approved in November, in addition to the draft personal income tax returns – ePIT – Hungarian taxpayers should have been able to use the system for draft VAT returns offered by the tax authority as of July. Pursuant to Government Decree 429/2021 (VII.16) published in the Hungarian Gazette on 16 July, the roll-out of draft VAT returns has been **switched to the tax assessment period starting on 1 October 2021**.

What is already known about draft VAT returns?

Draft VAT returns **can only qualify as tax returns with the active participation of the taxpayers affected** as they have to decide on the deductible tax for each invoice. If the taxpayer completes, accepts then submits the draft return online, this must be considered as fulfilment of the required invoice data reporting obligation in respect of the invoices received. It is important to highlight that **using the draft is not obligatory** for Hungarian businesses.

Draft VAT returns become available for taxpayers online on the 12th day from the end of the tax assessment period. Therefore, in practice you will **have eight days** to review the draft and reconcile it with the return generated by your accounting programme.

What steps are there to the implementation of draft VAT returns?

According to the Minister of Finance, Hungary is among the first countries to implement such a VAT return service. The system will be **introduced in several stages**. The first draft VAT returns will be available for the tax assessment period starting on 1 October 2021. **The first draft tax returns will be available from 12 November**. The drafts will then be generated exclusively using the data reported directly to the Hungarian tax authority. The system is expected to be expanded in subsequent phases:

- **From February 2022** the eVAT system **will be extended with VAT on product imports**. This means that the Hungarian tax authority will provide the taxpayer with the following data drawn from its records for the tax assessment period starting after 31 January 2022:
  - VAT payable by the authorised taxpayer on product imports, and
  - input VAT related to product imports.

- **From the tax assessment period including 1 April 2022**, taxpayers in Hungary will be able to **decide on the accounting of budgetary funding**.

- The following taxpayers may first use the draft VAT returns **from the period including 1 July 2022**:
  - taxpayers who request deferred payment owing to compensation because of pandemic measures in connection with diseases affecting animals,
  - taxpayers obliged to submit an EC sales list,
  - taxpayers purchasing or selling passenger cars within the EU,
  - taxpayers declaring certain transactions subject to the reverse charge mechanism (certain agricultural and metal industry products).

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Value added tax consulting

The system is being introduced to reduce administrative burdens, yet you should not forget that active participation from you as the taxpayer is still required. The development of the system will be carried out in multiple phases, so individual taxpayers will have to consider when is the right time to switch to draft VAT returns. If you have any questions related to the options available for your business regarding draft tax returns, feel free to contact WTS Klient Hungary.

Further useful information regarding eVAT

In addition, please note that taxpayers whose tax return submission frequency changes compared to that as of 1 October 2021 may first use draft VAT returns for the period starting on 1 January 2022.

Another modification is that by means of a self-revision on a designated form, the taxpayer can correct the tax base and tax in the electronically submitted return of a tax assessment period including a date prior to 1 July 2022.

If the tax return submitted based on the finalised draft is subject to a self-revision or correction, it may only be filed on the designated form.

Naturally, these options are not only **available for** taxpayers, but also for **the permanent representatives of taxpayers**, following electronic identification. Similarly to the online invoicing system, taxpayers may appoint a natural person as secondary user, who has the right to modify, supplement and approve the data in the draft, but are not authorised to submit the return.

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Education

- tax advisor
- certified international tax expert
- certified international indirect tax expert

Specialisations

- tax planning and review of complex tax issues
- due diligence related to acquisitions
- review of intra-group transactions (TP, VAT/supply chain)
- tax advisory related to international postings

Latest publications

- 5% VAT on homes – it's back
- Property transfers between siblings: duty-free from 8 July!
- Verification of intra-community supplies

Languages

Hungarian, German, English

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The latest WTS Global Newsletters have been released

The third edition of the WTS Global VAT Newsletter in 2021 wants to share with you insights on the latest changes in legislation, jurisdiction and statements of the tax authorities in terms of VAT and GST in eight countries: Austria, France, Germany, Hungary, Italy, Poland, Nigeria and Ukraine. You can download the newsletter in PDF format here: WTS Global VAT Newsletter #3/2021

The latest WTS Financial Services Newsletter presents taxation related news from 11 countries with focus on the international financial services industry. You can download the newsletter in PDF format here: WTS Global Financial Services Newsletter #3/2021

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Taxation of Artwork Guide 2021 has been released

As art markets continue to grow, WTS Global has taken the initiative to build dedicated expertise in this specific industry and to provide cross-border assistance to its private clients, corporate collectors, galleries, foundations and asset managers with regards to the taxation of artwork. This report is the first comprehensive study containing 26 country overviews from WTS Global member firms – including Hungary. You can download the publication in PDF format here: Taxation of Artwork Guide 2021

Cash payments – limits, reporting and due diligence obligations

Who should pay attention to the HUF 1 million, 1.5 million and 3 million thresholds, and when?

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There are various laws seeking to limit and minimise the use of cash between economic operators. This is understandable from a control and anti-money laundering perspective. At the same time, cash payments can be an unavoidable and prudent option with an unknown buyer/seller, or a buyer under bankruptcy or liquidation proceedings. In this article, we have summarised some of the things you should be aware of when making cash payments, in addition to the precautions to be taken.

Deadline for issuing invoices for cash payments

If the consideration for a taxable domestic supply of goods or services is paid in cash or by non-cash means, the taxpayer must issue an invoice no later than at the time of payment (immediately).

Cash payment limit

Hungarian legal entities and natural persons liable for VAT (including the sole proprietor) must have at least one account at a Hungarian bank. Their cash assets must be kept on a bank account and their monetary transactions must be carried out on a bank account – except for cash assets kept for cash payments. They may make payments in cash as consideration for services or the sale of goods to each other as part of their taxable activity **in an amount not exceeding HUF 1.5 million** (roughly EUR 4,300) per calendar month for each contract, including VAT where applicable.

Who does this apply to? Hungarian legal entities and natural persons liable for VAT (including the sole proprietor) if they transact with each other. The limit is not applicable to purchases made by private individuals who are not subject to VAT.

What does this apply to? Only the consideration of transactions linked to or supporting business activities (taxable activities), and only for cash payments. It is not considered a cash transaction if the bank account of at least one of the parties is debited/credited.

What is the threshold? No more than HUF 1.5 million per contract per month, but if it can be established without doubt that the legal transaction between the parties is governed in multiple contracts as a result of unlawful legal practice, this must be considered a cash payment under one contract, and the amounts shall be added up.

If the rule is violated, both the taxpayer making the cash payment and the party receiving it shall pay a default penalty of 20% on the amount exceeding HUF 1.5 million per calendar month per contract as the basis for the penalty.

Obligations related to cash payments for related companies

Cash payments made for services in excess of **HUF 1 million** (roughly EUR 2,900) rendered among related companies must be reported.

Who does the reporting? The buyer. Private individuals not conducting business activities are not subject to a reporting obligation.

When? Within 15 days of the day of the cash payment.

To where? To the National Tax and Customs Administration of Hungary, on Form 40.

What? Only cash payments made as consideration for services.

Failure to fulfil, or delaying the reporting obligation may be punishable by a default penalty.

If the value of a transaction exceeds the above thresholds, it is better to make the payment through an instant payment system (for example a QR code, payment request), or use a bank card or other mobile application for the payment. It is worth establishing this system of payments even for transactions among wholesalers.

It is important to note that the cash management policy to be prepared as part of the accounting policies must be supplemented with the new payment solutions.

Goods traders and money laundering

Only goods traders fulfilling their obligations set out in the provisions of the Hungarian Act on the Prevention and Combating of Money Laundering and Terrorist Financing and registered at the competent trade authority may accept cash payments up to **HUF 3 million** (roughly EUR 8,600) as part of their activities. The goods trader must conduct a customer due diligence upon cash payments made as part of transactions exceeding the value of HUF 3 million.

Who qualifies as a goods trader? Anyone conducting the sale of goods to buyers, traders and manufacturers as part of their business activity.

What does this apply to? Only transactions involving payments in cash. It is not considered a cash transaction if the bank account of at least one of the parties is debited/credited.

What is the threshold? HUF 3 million, but the due diligence obligation extends to multiple, connected transactions too if they total at least HUF 3 million on aggregate.

Do the thresholds of HUF 1 and 1.5 million described above also apply to goods traders? Yes. The HUF 3 million threshold applies to the obligation stemming from the provisions of the Hungarian Act on the Prevention and Combating of Money Laundering and Terrorist Financing.

Accounting advisory

Limitations on cash payments as well as the reporting and due diligence obligations related thereto must be considered by all Hungarian businesses as they can lead to serious penalties. Besides our tax consultants and legal advisers, our accounting advisers are also happy to help should you have any questions regarding any obligations, and you can count on their expertise even if, due to the introduction of new payment solutions, you need to update your cash management policy as part of your accounting policies.

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Policies governing the operation of businesses in Hungary

What should you know about policies in general, and which policies should you prepare?

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Having a multitude of policies is an integral part of the life of every business, along with constantly revising them and preparing new ones. The first of these policies, although it has a different name, is the **articles of association**. When founding a company, the owners lay down the basic rules defining the operation of the company in the articles of association: among other things, the tasks and powers of the main body of the business (members' meeting, general meeting), the head of the business (managing directors, directors) and the supervisory board (if any).

The business may start working based on the articles of association, but the definition of the necessary rules and policies does not end here. Beyond the requirements relevant for all businesses, **compiling additional policies is also mandatory** in Hungary depending on the activity of the business.

General characteristics of policies

What all policies have in common is:

- they have to be **prepared** or you have to have them prepared by an appropriate professional, by the deadlines specified in law, with the content defined by laws and regulations but taking account of the specific features of the business,
- the appropriate executive body of the business has to **approve** them and **put** them **into effect**,
- their content and requirements have to be **made known to the persons concerned**, namely, the employees to whom they apply,
- the rules prescribed in them have to be **applied**,
- it is best to **check policy compliance**, and in many cases, even an external party (auditor) or a state authority also checks them regularly,
- in the event of any changes in the law or in the life of the business, the relevant **change** has to be **incorporated** in the policies.

Most important policies

All Hungarian businesses have to prepare their accounting policies which form the basis of the company's bookkeeping, reporting, accounting settlements and valuations.

As for taxation, pricing principles and methods related to intragroup transactions should be determined in a transfer pricing policy, which can be the basis for the company's transfer pricing documentation.

When managing the personal data of private individuals, be they employees or clients, or when using websites, newsletters, webstores or cameras, the business may need a **data protection and processing policy** prepared based on the GDPR. This policy contains the requirements of data protection and data processing, the sample communication to be provided to private individuals, and a sample of the consent of private individuals to data processing.

Employers must ensure safe working conditions for employees that are not hazardous to human health. The necessary requirements are included in the **health and safety and fire safety policy** of the business which define the rules of conduct for work, the health and safety procedures as well as any measures to take in the case of accidents or fire at the workplace.

If the employer provides fringe benefits (local public transport passes, SZÉP cards etc.) for its employees, a **fringe benefit policy** also has to be prepared in Hungary. In this policy, the employer defines who is entitled to fringe benefits, the types of benefit the employee can choose from, the allowance available for the employees and the forms and invoices, etc. needed to claim the benefits.

The **policy for temporary foreign and domestic postings** provides for the process of approving work-related travel, accountable costs arising during the travel, and daily allowances.

If the business provides a company car for an employee, its **company car policy** will record the conditions for the private and business use of the company car along with the accountable costs and any reimbursements payable.

Other policies

In addition to the above, of course, there may be other policies related to the operations of the business, either recommended or mandatory, required by law (codes of ethics, policies related to quality management systems such as ISO, HACCP), and it is worth gathering information about these when planning the activities of the business.

Accounting, payroll, legal and tax advisory from one source

It can make life easier for all businesses if they have a complex business adviser to help them find their way among the multitude of policies required. The accounting, legal, tax and payroll specialists at WTS Klient Hungary have significant knowledge and experience in their respective fields, and in constant consultation with each other, they are ready to assist you in preparing any of the policies summarised in this article.

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Specialisations

- accounting
- IFRS
- accounting advisory
- payroll

Education

- economist
- chartered accountant
- IFRS-certified chartered accountant
- tax advisor

Latest publications

- Hungarian branch of a foreign-registered company
- Data content of invoices
- Electronic invoices

Languages

Hungarian, English

Establishing cross-border service permanent establishments in Hungary

What should foreign business entities pay attention to?

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From 1 January 2021 the corporate taxation rules on creating a permanent establishment in Hungary were tightened in general. However, widening the definition of permanent establishment in domestic law to include service permanent establishments does not automatically generate a corporate tax payment liability in Hungary, including the additional administration, for all businesses. To see which entities have to consider the extended rules the most, Hungarian law and the current conventions for the avoidance of double taxation must be interpreted together.

Definition of service permanent establishments

Based on the Hungarian definition, you might first think that a corporate tax permanent establishment means a permanent business establishment, equipment and accessories used by the taxpayer in whole or in part for business activities.

However, under the amended legislation, from 2021 a **corporate tax permanent establishment may also be created for foreign service providers** who, in the absence of a physically identifiable place of business in Hungary, only carry out their **activities through their employees or natural persons with whom they have some other legal relationship**.

Yet another condition in Hungarian law for setting up service permanent establishments in Hungary is that the duration of the service provision in Hungary, whether continuous or interrupted, **should exceed 183 days in any 12-month period**. In addition, when calculating the service period, related and associated services must be taken into account together.

Hungarian definition and international conventions

For tax issues arising in international transactions, where two countries are involved in determining the tax liability, the bilateral tax conventions in force should always be examined. And the principle of the primacy of international conventions must always be taken into consideration during this review.

As discussed in our previous article, the Hungarian definition of a corporate tax permanent establishment is basically consistent with the OECD Model Tax Convention. However, there are deviations in several cases from the Tax Model Convention in the conventions for the avoidance of double taxation signed and adopted by the Contracting States.

It is important to clarify that **if two states have an agreement in force on the avoidance of double taxation, service permanent establishments may only be created in Hungary if the convention concluded with the state where the service provider is resident sets forth the rules for such an arrangement**.

However, only a limited number of conventions existing with Hungary provide for the creation of a permanent establishment for service provision. Apart from relatively recent conventions with more distant countries (such as the United Arab Emirates, Qatar or Saudi Arabia), there are hardly any conventions with countries geographically closer to Hungary that have been in force for a lengthy period (e.g. Slovakia, Czech Republic) in which such a provision can be found.

Moreover, contrary to the Hungarian definition of a permanent establishment, in some international conventions a service provision of a shorter duration (e.g. three or four months in the case of Indonesia or Armenia) may allow for the creation of a permanent establishment, rather than 183 days.

For states with which there is no convention in force for the avoidance of double taxation, the definition of the Hungarian Corporate Tax Act applies; in these cases, the provision of services for a period exceeding 183 days may give rise to a corporate tax permanent establishment.

Administrative obligations and other taxes

Service permanent establishments may result in a **registration obligation** in Hungary **as well as corporate tax return and payment**

obligations. It often happens that the service provider and the recipient are related companies. In such cases, it must be examined separately whether there are any obligations on transfer pricing records under Hungarian rules. Justifying compliance with transfer pricing guidelines can be a challenge, especially when pricing cross-border management services.

In Hungarian law there are different definitions for the permanent establishment in the Companies Act, in the Local Tax Act, and even in the VAT Act, therefore the possibility of setting up a permanent establishment must be examined separately for the various tax types.

Practical examples

In the case of **service arrangements with multiple parties** it is not always easy to determine which business is likely to be exposed to the risk of service permanent establishments and to the associated administrative burden. To understand this, let's look at the short example below.

A German parent company hires an independent Slovak company to provide consultancy (or management, as the case may be) services for a Hungarian subsidiary at a fixed location. The question arises as to whether the German, the Slovak, or even both companies can set up a permanent establishment in Hungary.

Under the arrangement, the Slovak company provides the service through its own employee to the German company as the client, which then acts as an intermediary for the Hungarian subsidiary. If the activities carried out in Hungary last for a total of at least six months in a 12-month period, the Slovak company must establish a corporate tax permanent establishment in Hungary under the convention with Slovakia. However, the German company should not be exposed to this risk, as it does not provide services through its own staff or through a natural person with whom it has another legal relationship.

If the same service is provided by a German company by authorising a Slovak private individual, then based on the provisions of the convention concluded with Germany, the risk of service permanent establishments in Hungary does not arise for the German company (nevertheless, personal income tax and employer registration issues may emerge).

In all cases, the risk of service permanent establishments therefore **depends on the type of service, the circumstances in which it is provided, and the different provisions of the various conventions and local legislation**. For these reasons, care should be taken when entering into a cross-border service contract to avoid tax risks.

Tax planning and consulting based on international and Hungarian standards

If you need support regarding the tax treatment of complex cross-border service arrangements, assessing the risk of service permanent establishments or, where appropriate, the entire administration related to permanent establishments, you can rely on our colleagues. The tax advisory team at WTS Klient Hungary has significant expertise in the taxation of various international transactions. Feel free to contact us.

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» compliance, preparation of tax returns in all taxes
» VAT-registration of foreign companies and related tax consulting
» transfer pricing, preparation of transfer pricing documentation
» tax advisory related to international postings

Latest publication

» New EKAER decree from 1 January

Languages

Hungarian, German

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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» Legal consulting
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