

wts klient newsletter

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The Bridge.



Dear Readers,

One day, a client of ours entered our office stating that the tax authority was to be terminated. I confess I had my doubts, so to prove his point he pushed a document in front of me, the header of which contained the official logo of the NAV and the following title: "Final notice".

All right, I confess, I borrowed this story from a 1930s' Hungarian film, but let's admit, for just a split second this absurd situation did bring a smile to your face, didn't it?

The reality, however, is rather the opposite. Besides the government portal we will soon be able to communicate with the tax authority through a "business gate" too (this was covered by the [WTS Klient Newsflash](#) published the day before yesterday), and the first article of this newsletter also deals with the legal remedies open to taxpayers against NAV resolutions.

In light of all this I sincerely hope that the next time you receive a letter from the NAV, the title will be "**Reliable taxpayer rating**" rather than the deceptive illusion of a "Final notice".

Zoltán Lambert
managing partner

Legal remedies in tax administration

Taxpayers are not defenceless against adverse NAV procedures or decisions, legal remedies are available within the tax authority or in court.

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Publication of annual reports and sanctions in the absence of e-reports

Publishing annual reports is mandatory for almost all companies applying double entry bookkeeping. The absence of e-reports may result in sanctions.

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Legal remedies in tax administration

The most basic legal remedies for adverse tax administration decisions:

- appeal – a prerequisite for court proceedings, submission deadlines must be met
- supervisory action – can be initiated ex officio or based on an application at any time within the statute of limitation period
- judicial review (tax lawsuit) – statute of limitation, a tool for external legal remedies

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Even if you handle your tax issues with the utmost care and use the tools provided by law (e.g. [self-revision](#), [cooperative procedure](#)) you can still encounter legal disputes in relation to NAV procedures. However, taxpayers are not defenceless against adverse procedures or decisions, there are a number of legal remedies (appeals, supervisory action, judicial reviews) available. In this article we present the most basic rules applicable for simple cases.

Appeal

As a primary tool of legal remedies, an appeal against a resolution made by the given NAV County Directorate must be submitted to the County Directorate where the decision was made, but addressed to the tax authority of second instance (NAV Appellate Directorate). Generally, the deadline for an appeal is 15 days from the notification date of the first-instance resolution (30 days in the case of a retrospective tax assessment). **As a rule, an appeal is a prerequisite for a judicial review**, which means an appeal must be submitted against the adverse NAV decision in order to open up the possibility of going to court. The appeal must include the reason and the extent to which we disagree with the NAV's opinion. The Appellate Directorate examines the appealed decision as well as the entire procedure conducted before the decision, ignoring who lodged the appeal and why. Before submitting the appeal it is useful to know that there is a fee (which ranges from HUF 5,000 to HUF 500,000 – from approx. EUR 16 to EUR 1,600) and that the resolution made as a result of the appeal can be more serious for the appealing entity than the first-instance resolution.

Supervisory action

An application for supervisory action can be lodged against the final resolution to the superior tax authority (in the case of the NAV's Appellate Directorate, the superior body is the NAV's Central Directorate). Supervisory action can also be taken ex officio. **There is essentially no deadline for supervisory action, this can happen at any time during the statute of limitation period.** Submitting an application for supervisory action is not necessarily ruled out by filing a legal action either, the two legal remedies can be conducted at the same time. Although the superior tax authority may, reject an application for supervisory action without any substantive investigation, if the taxpayer initiates the judicial review then under customary law the application is generally not rejected. The fee applied for supervisory action is the same as that for an appeal. One major difference compared to the rules of appeal is that because of the application for supervisory action, no decision can be made that changes the tax liability to the detriment of the taxpayer. If there is cause to adopt a more serious decision for the taxpayer, the unlawful resolution is annulled and new proceedings are launched, during which all the legal remedies become available again.

Judicial review

Legal action submitted to a court falls under legal remedies guaranteeing the fair and lawful operation of tax administration. The action must be filed at the first instance tax authority, with reference to the violation of the law, within 30 days of the notification of the second instance resolution (when it becomes final). At the same time, the action can request that the enforcement of the tax authority resolution be suspended. During the lawsuit the court is bound by the action, so the decision made by the tax authority may not be more serious; however, if the case is lost, fees and court costs need to be paid. Court proceedings are generally long and demanding, and statistics show that a high percentage of the cases are won by the NAV, **but in the case of new and non-standard tax issues, it is always worth considering legal action.**

Publication of annual reports and sanctions in the absence of e-reports

Publication of annual reports and sanctions in the absence of e-reports

- publication deadline
- entities required to publish their annual reports and exemptions
- Online Reporting and Form Completion System (OBR)
- sanctions in event of failure to publish

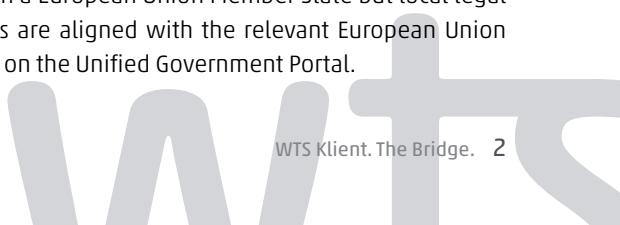
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Companies are required to publish and file their simplified annual reports and annual reports by the last day of the fifth month following the financial year's balance sheet date (31 May for companies following the normal financial year) and their consolidated annual reports by the last day of the sixth month following the financial year's balance sheet date (30 June for companies following the normal financial year). Since 1 December 2016, companies have been able to meet this publication and filing requirement using the **Online Reporting and Form Completion System**, known in Hungarian as the **Online Beszámoló és Úrlapkitöltő Rendszer (OBR)**, which stores electronic reports (e-reports for short) for subsequent searching, viewing and downloading. But let's not get ahead of ourselves.

Which companies are required to publish and file their annual reports electronically?

Pursuant to Section 154 of Act C of 2000 on Accounting, **all companies using double entry bookkeeping** (including the Hungarian branch offices of companies established abroad) are required to file and publish their annual reports. E-reports can be accessed electronically by anyone through this system, with a few exceptions of course. The following entities are exempt from the publication and filing obligation:

- Trustees
- Hungarian branch offices of enterprises established abroad, if the parent company's registered office is located in a European Union Member State or if the parent company's registered office is not located in a European Union Member State but local legal requirements governing reporting, auditing, filing and publication obligations are aligned with the relevant European Union requirements. The list of these countries is published by the competent minister on the Unified Government Portal.
- Law firms



It should be noted that Hungarian branch offices are exempt from publishing their own annual report, but they are required to publish their parent company's annual report once it is complete.

How to access and use the OBR?

The Online Reporting and Form Completion System can be reached at e-beszamolo.im.gov.hu/ebekuldes. Users can log into the system through the [government portal](#). After logging in, users can choose from the following menu items:

- **Submitted filings and notifications**, where annual reports previously filed can be accessed and saved
- **Complete filing**, where the annual report data can actually be uploaded
- **Reload/open downloaded document**, where users can reload reports previously uploaded and saved (but not published) to avoid having to re-enter the data.

After uploading the data, the form can be saved, printed and filed through the government portal, where it is transferred to the electronic reporting portal within minutes; all e-reports can be searched for, downloaded and printed via the portal.

What has to be published, what data must be uploaded to the OBR?

- Company data: name, tax number, registration number, CSO (Hungarian Central Statistical Office) number, registered office
- Data of accounting and auditing company (where applicable): name, tax number, registration number, address
- Particulars of person responsible for accounting and auditing: name, address, registration number
- Data of company filing the annual report: name, tax number, registration number, address
- Data of person filing the annual report: name, tax identification number, address, legal grounds for representation
- Data of person(s) authorised to sign the annual report: name, tax identification number, address
- Balance sheet and income statement
- Supplementary notes
- Decision on utilisation of profit after tax
- If a statutory audit was conducted, independent auditor's report including auditor's opinion or the grounds for refusing the auditor's opinion

What are the sanctions if companies fail to publish their annual reports on time, and therefore their downloadable e-reports for a specific year are missing?

If a company is late in meeting its publication and filing obligation, it **may be subject to a default penalty** of up to HUF 500,000 (approx. EUR 1,600). When the penalty is imposed, the National Tax and Customs Administration simultaneously sends a letter of formal notice to the company, providing an additional 30 days to rectify the default.

If the company fails to meet its publication obligation by this additional deadline, the National Tax and Customs Administration sends a second letter of formal notice to the company, providing another 60 days to rectify the default, and simultaneously levying a default penalty of up to HUF 1 million (approx. EUR 3,200).

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"Tax-related judgments delivered by the Court of Justice of the European Union convey very important messages for Hungarian taxpayers."

Tamás Gyányi, WTS Klient Hungary partner

Source: inforadio.hu



Turn on your radio!



An extremely important judgement was recently published by the Court of Justice of the European Union with relevance for Hungary, regarding the recurring dilemma of reverse VAT versus direct VAT. "The judgement that concerns the legitimacy of the maximum legally permissible fine that the Hungarian tax authority can impose, as well as the reclaiming of unlawfully deducted VAT directly from the tax authority, might have an effect on the NAV's penalty procedures too" – explains Tamás Gyányi, tax partner at WTS Klient Hungary, discussing the issue on InfoRadio on 20 July.

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

Please note that the conversation is available only in Hungarian.

If the company's e-report is still not available by the second additional deadline, i.e. it has not been published, the National Tax and Customs Administration deletes the taxpayer's tax number and initiates proceedings to declare the company "terminated".

In practice, the first letters of formal notice are generally received by taxpayers operating according to a normal financial year around late July or early August, and the default penalty also appears on their tax account at this time.

It should also be noted that the figures included in **the balance sheets and income statements uploaded through the OBR are also checked by the system**, which monitors the ratio of shareholder's equity and registered capital for example, and the expected size of registered capital for the company's legal form. If these figures do not correspond to the statutory requirements, companies may receive an almost automatic request from the Court of Registration to rectify this.

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 - » Financial advisory
 - » Legal consulting
 - » Accounting
 - » Payroll
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