



Dear Readers,

The significance of the Chinese economy in terms of its impact on the world's economy is growing year by year. It makes the recent [publication](#) of WTS Global particularly relevant. The number of Chinese investors in the Hungarian economy is also increasing. It is no longer considered an unacceptable adventure if we trade with a Chinese company, or if we appear in China with our products or services.

Very rarely does presence in a foreign country initially mean setting up a company. Sometimes it does not even occur to us that our entry into the Chinese market will entail a **permanent establishment** under certain conditions. This may **imply a corporate tax payment liability under Chinese rules too**.

The "[PE in China](#)" study draws attention to this taxation risk while describing some typical cases. You will also find out the response of Chinese laws to the BEPS (basic erosion profit shifting) rules of OECD countries in assessing the corporate tax base. We hope you enjoy reading the study, as well as this week's edition of WTS Klient Newsletter.

Eszter Balogh  
partner

### Providing evidence during tax inspections

Taxpayers are entitled to initiate a procedure for providing evidence, but from 2018, the possibility to refer to new evidence in appeals may be limited. [» page 1](#)

### Year-end stock-taking tasks loom closer

The authenticity of the recorded data has to be corroborated with a quantity count at intervals specified in the internal policy, but at least every 3 years. [» page 3](#)

## Providing evidence during tax inspections

### During a tax inspection the following must be considered in relation to providing evidence:

- tax authority is obliged to clarify facts of the matter
- as a general rule, facts or circumstances not proven may not be used against the taxpayer
- we are entitled to initiate a procedure to produce evidence
- stricter deadlines expected from 2018: only 30 days permitted to make comments
- from 2018, the possibility to refer to new facts and evidence in appeals will be limited

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The rules for providing evidence, related tax authority obligations as well as taxpayer rights are crucially important during a tax inspection. This article provides some help here, paying particular attention to the provisions of the draft [tax administration law](#), effective from 2018, which lays down limitations in this respect.

#### Rules for providing evidence - in a nutshell

The rules for providing evidence are prescribed by [Act XCII of 2003 on Rules of Taxation](#) and [Act CXL of 2004 on the General Rules of](#)

[Public Administration Procedures and Services](#). "Freedom of evidence" generally crops up during tax inspections, which means that the Act on Rules of Taxation only lists tools and examples of evidence, while the tax authority can freely choose the applicable means of evidence it wants.

The NAV evaluates evidence one by one and as a whole, and establishes the facts of the matter on this basis at its own (free) discretion. The most common way of providing evidence is to compare and evaluate the documents, receipts and records required to assess taxes. In addition, the tax authority can summon taxpayers to make declarations, it can hear witnesses, or it can initiate a related investigation. Of course, taxpayers are also entitled to submit motions. It is important that **evidence provided but ignored, and the reasons for this, must be included by the tax authority in its decision**. One of the most important tools for the taxpayer in providing evidence and putting forward arguments is to make comments on the inspection report. The tax authority mainly expresses its position in a decision.

#### Obligation to produce evidence and reversal of the burden of proof

The obligation to produce evidence determines the party responsible for providing evidence according to procedural rules, while the reversal of the burden of proof means that failure to provide evidence may result in findings detrimental for the taxpayer.

During the inspection the tax authority is obliged to clarify and prove the facts of the matter. It is very important **when clarifying the facts that the NAV is also obliged to disclose facts in favour of the taxpayer**. The taxpayer's obligation (task) in producing evidence is very limited, and basically restricted to cases when the taxpayer is entitled to a tax exemption or tax allowance, as this must be proven by the taxpayer with a document or other relevant means.

In **estimation procedures** (e.g. examining wealth gains), the taxpayer can prove estimated differences from the tax base with reliable data. So in the case of estimations, the burden of proof shifts, **but this does not mean that the tax authority is exempted from its obligation to clarify the facts of the matter**, i.e. it can abandon the taxpayer in relation to providing evidence.

### What does "providing evidence in dribs and drabs" mean?

A tax inspection can cover a period that is about to lapse, so it is questionable whether the NAV can close the inspection with a final decision before the limitation period expires (in the case of personal income tax this means within 6 years of the relevant fiscal year). In these cases, taxpayers may engage in malicious conduct that is difficult to identify, i.e. withholding evidence or finding the right time to put forward proposals to extend the term of the inspection and the subsequent public administration procedure.

This can cause difficulties for the inspectors in many respects as the tax authority is obliged to examine the proposals put forward by taxpayers related to providing evidence, and clarify the facts of the matter, even if this means the final decision may not be made in a timely manner.

### Limitations on providing evidence according to expected new rules

The draft tax administration law prescribes **stricter deadlines** for tax inspections. According to the draft law, a tax inspection must be finished within 365 days, and there is a deadline of 30 days to make comments on the report closing the inspection, after which the taxpayer loses this right.

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## Successful legislative proposals

### Positive discrimination of reliable taxpayers

Conversations with our clients have confirmed that for reliable taxpayers it is worthwhile achieving a distinguished status.

We recommended to the Ministry for National Economy that taxpayers who were formerly considered qualified taxpayers if certain conditions were fulfilled, should expect a penalty of no more than 20% again if they make a mistake when calculating their tax liability. We emphasised that re-introducing this positive discrimination would acknowledge the attitude of trustworthy companies.

It took a while for this recommendation to be accepted, but the new requirements valid from 1 January 2016 exceeded our expectations in some respects. **The 2016 amendments to Act XCII of 2003 on Rules of Taxation introduced the terms "reliable and risky taxpayers" and inclusion among the group of reliable taxpayers was subject to fulfilling a set of conditions** reviewed during a qualification procedure.

Taxpayers fulfilling this relatively detailed set of conditions enjoy numerous advantages compared to the general sanctions: tax inspections performed at them cannot exceed 180 days, if they fail to file a tax return then instead of receiving an immediate default penalty, they receive a reminder about their tax return obligation, and the upper limit of the tax penalty for them is half the generally applied 50%, i.e. 25% of any tax shortfall – to mention just the most important advantages.

**Do you have also an opinion about taxation? Would you like the government to listen to your proposals on tax policy in Hungary? Then come to our Tax Strategy Day 2018 conference!**

Our company was naturally also included among the reliable taxpayers. We are very happy about this positive discrimination and about the message that as equal parties we are treated more as partners in our dealings with the tax authority.

**Katalin Barlai Halász, Head of Finance and Accounting, Kirchhoff Hungária Kft.**

One of the most important potential changes is that **when submitting an appeal it is not possible to bring up new facts**, or refer to new evidence **which the appellant was aware of before the first-instance decision**, but refused to submit or refer to it despite a call from the tax authority.

The appellate tax authority may also take action for facts to be supplemented. According to the draft law, the procedural deadline will be 90 days following receipt of the order sent to the first-instance tax authority from the superior authority. This "extra" period for producing evidence will extend the deadline for legal remedy proceedings.

## Year-end stock-taking tasks loom closer

"The statutory change defining the 3-year period entered into force on 1 January 2012, thus the second period expires on **31 December 2017.**"

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Companies operating according to a normal financial year will soon reach the end of their year. In preparation for their annual reporting, these firms have to take certain steps in terms of stock taking.

Traditionally, this means the recording of **assets** in an inventory, but it is important to note that **equity and liability elements** in the annual report also have to be supported by an inventory. The Act on Accounting defines the principles and obligations related to stock-taking. In addition to other policies, the stock-taking and inventory policy has to be prepared for assets and equity and liabilities when compiling the accounting policies. This includes the assets and liabilities to be included in the stock-take, the counting and evaluation methods, the documentation system and schedule along with the persons in charge of it.

### Stock-taking rules according to the Act on Accounting

Section 69 of the Act on Accounting states that an inventory has to be compiled and kept for the year-end accounting closure, the preparation of the annual report and to substantiate balance-sheet items, which includes the assets, equity and liabilities of the company as of the balance sheet date, in terms of both quantity and value, item by item, in a verifiable manner. Sub-ledgers have to be reconciled with the bookkeeping data in the general ledger, and the reasons for any deviations have to be justified and managed from an accounting point of view.

The aforementioned section of the Act on Accounting also formulates provisions (Section 69 (3) and (4)) regarding the stock-taking tasks in terms of whether the company keeps **quantity records** of assets, equity and liabilities **on a continuous basis**. If not, the authenticity of the data added to the inventory as of the balance sheet date must be verified, since no information is available at all on quantities during the year.

If quantity records are kept continuously, the authenticity of the data has to be supported in the stock-taking and inventory policy for assets, equity and liabilities via a quantity count at specified intervals, but **at least every three years**. In this case the quantity records are available, so the law permits mandatory reconciliation on a less frequent basis.

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"The reduction of tax rates, tax administration and tax fines are the three main amendments taxpayers are happiest about."

**Tamás Gyányi, WTS Klient Hungary Partner**

Source: inforadio.hu



### Turn on your radio!



On Tuesday 14 November, the National Assembly approved the tax law and related amendments for 2018. On InfoRadio on the evening of 16 November, Tamás Gyányi, partner of WTS Klient Hungary, will be discussing which parts of the amendments were preceded by social consultations, and to what extent did proposals from the profession, including WTS Klient Hungary, influence and shape the legal amendments ultimately approved.

Listen to the discussion on the radio, or click on [this link](#). Please note that the conversation is available only in Hungarian.

## End of second 3-year period: 31 December 2017

The statutory change defining the three-year period entered into force on 1 January 2012, so the first 3-year period expired on 31 December 2014. **The last day of the second period will be 31 December 2017.** Thus companies which prepare their inventory according to the statutory schedule will soon have to carry out stock-taking tasks again. Although this provision may well apply to assets, equity and liabilities whose quantities are continually recorded in practice, **it still affects tangible assets the most.**

For stock-taking to be as quick as possible, it is best to take advantage of the opportunities offered by modern technology. **Bar code-based records** are becoming more and more widespread, and if appropriate software is used, they automatically allocate quantities to the tangible asset records that underlie the general ledger bookkeeping. Appropriate preparations are required for this of course, but the invested time and energy will yield multiple benefits later on through the automation of the stock-taking process.

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