

## CZECH REPUBLIC

### TRANSFER PRICING PROFILE

#### 1. Reference to the Arm's Length Principle

Section 23(7) Act on Income Tax:

Where prices agreed between related persons (parties) differ from prices that would be agreed between independent persons (parties) in usual business relationships under the same or similar terms (conditions), without such difference being documentable sufficiently, the taxpayer's tax base is adjusted by the ascertained difference; this applies even when the price between taxpayers of corporate income tax is zero. If the price that would be agreed between independent persons in usual business relationships under the same or similar conditions could not be ascertained, it is necessary to proceed from the price ascertained according to a legislation governing the valuation of assets.

#### 2. Reference to the OECD Transfer Pricing Guidelines

Not directly, only through the guidelines (Administrative action) – Guidance D-332

[http://www.financnisprava.cz/assets/cs/prilohy/d-zakony/Pokyn\\_D-332.pdf](http://www.financnisprava.cz/assets/cs/prilohy/d-zakony/Pokyn_D-332.pdf)

#### 3. Definition of related parties

Section 23(7) Act on Income Tax:

For the purpose of this Act, "related persons" (parties) shall mean to be:

- (a) persons (parties) related through capital whereby:
  - 1. one person (party) directly participates in another person's (party's) capital or voting rights, or one person (party) participates in the capital or voting rights of more persons (parties) and this person (party) has a holding of at least 25% in the others' registered capital or voting rights; in such a case all are regarded as mutually related directly through capital;
  - 2. one person (party) indirectly participates in another person's (party's) capital or voting rights, or one person (party) indirectly participates in the capital or voting rights of more persons (parties) and has a holding of at least 25% in the others' registered capital or voting rights; in such a case all are regarded as mutually related through capital;
- (b) otherwise related persons (parties):
  - 1. whereby one person (party) participates in the management or control of another person (party);
  - 2. whereby identical persons or close persons participate in the management or control of other persons (parties) and such other persons (parties) are otherwise related persons (parties); as an otherwise related persons are not considered persons participating in supervisory board of the both persons (parties);
  - 3. involving a controlling person (party) and a controlled person (party), and/or also persons (parties) controlled by the same controlling person (party);
  - 4. being close person
  - 5. being persons (parties) having established a legal relationship predominantly for the purpose of reducing their tax base or increasing their tax loss.

A holding in the registered (basic) capital or holding in the voting rights for a period for which a tax returns is filed, shall be computed as an arithmetical average of monthly holdings. Participation in an auditing commission or similar inspection body and the rendering of auditing (inspection) for remuneration shall not be considered as participation in the control.

#### 4. Transfer pricing methods

We follow the OECD Guidelines.

#### 5. Transfer pricing documentation requirements

Not directly, we follow EU and OECD recommendations (Guidance D – 334)  
[http://www.financnisprava.cz/assets/cs/prilohy/ms-prime-dane/Pokyn\\_D-334.pdf](http://www.financnisprava.cz/assets/cs/prilohy/ms-prime-dane/Pokyn_D-334.pdf)

Implementation of the Code of Conduct on Transfer Pricing documentation for associated enterprises in the European Union (EU TPD) - summary of Member States' responses to the 2013 JTPF questionnaire on the implementation of the EU TPD:

[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/jtpf/2013/summary-ms.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2013/summary-ms.pdf)

#### 6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

No specific transfer pricing procedure

#### 7. Information for Small and Medium Enterprises on TP

Information relevant for SMEs in tackling transfer pricing matters is available on the JTPF webpage at:  
[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/profiles/profile-cz.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/profile-cz.pdf)

#### 8. Information on dispute resolution

**Competent Authority**

for MNE and transfer pricing cases:  
Mr. Michal Rohacek  
Head of Direct Taxes International Cooperation Unit  
General Financial Directorate  
Lazarská 7, 117 22 Prague 1  
Czech Republic  
Tel: +42029685 4162  
Fax: +42029685 3047  
e-mail: [michal.rohacek@ds.mfcr.cz](mailto:michal.rohacek@ds.mfcr.cz)

for cases on the application of double taxation treaties:  
Mr. Vaclav Zika  
Deputy Director of Income Tax Department  
Head of International Tax Relations Unit  
Ministry of Finance  
Lazarská 7, 118 10 Prague 1  
Czech Republic  
Tel: +42025704 3197  
Fax: +42025704 4049  
e-mail: [Vaclav.Zika@mfcrcz](mailto:Vaclav.Zika@mfcrcz)

**Organization**

for MNE and transfer pricing cases:  
General Financial Directorate (Direct Taxes Department, Direct Taxes International Cooperation Unit)  
for cases on the application of double taxation treaties:  
Ministry of Finance (Income Tax Department, International Tax Relations Unit)

**Scope of MAP & MAP APA**

for MNE and transfer pricing cases:  
Taxation not in accordance with the provisions of the double tax treaties;

	<p>interpretation and application of the DTA in cases which are not covered by the DTA. Negotiation of bilateral or multilateral APAs. for cases on the application of double taxation treaties: Taxation in accordance with the provisions of the double tax treaties; interpretation and application of the DTA in cases which are covered by the DTA.</p>
<b>Domestic guidelines &amp; administrative arrangements</b>	<p>APA - Section 38nc of Act on Income Tax; Guidance D-333, Communication by the Ministry of Finance in respect of binding ruling on the transfer pricing policy used in related party transactions.</p>
<b>Time for filing</b>	<p>Keeping with the DTA provisions.</p>
<b>Form of request</b>	<p>for MNE and transfer pricing cases: A letter to the locally competent tax administrator (by the Czech taxpayer) or to the competent authority (by the other tax authority). for cases on the application of double taxation treaties: A letter of the Czech taxpayer addressed to the Czech competent authority or a letter of the foreign tax authority to the Czech competent authority.</p>
<b>Documentation requirement</b>	<p>No special documentation requirement, but in accordance with the domestic tax law a person liable to tax must substantiate (i.e. provide documentary evidence of) all the facts which he/she is obliged to state in his/her tax return, supplementary tax return and other submissions or he/she must substantiate these facts when requested to do so by the tax administrator in the course of tax proceedings.</p>
<b>User fees</b>	<p>10 000 CZK for APA</p>
<b>Tax collection / penalty / interest</b>	<p>Collection by the local competent tax administrator.</p>
<b>Other dispute resolution mechanisms</b>	<p>The EU Arbitration Convention for transfer pricing cases.</p>
<b>Government Website</b>	<p><a href="http://www.financnisprava.cz">http://www.financnisprava.cz</a> <a href="http://www.mfcr.cz">http://www.mfcr.cz</a></p>

Dispute resolution under the Arbitration Convention does not need to be initiated and may be suspended if one of the enterprises involved is subject to a 'serious penalty' for the transactions giving rise to the profit adjustment (Article 8).

Unilateral Declaration of Czech Republic on Article 8 of the Arbitration Convention (*Official Journal C 160, 30/06/2005 P. 0011 – 0022*)

"An infringement of the tax laws punishable by "serious penalty" is constituted by any infringement of the tax laws penalised by detention, criminal or administrative fines. For these purposes, by "infringement of the tax law" is meant:

- (a) failing to pay the charged taxes, social insurance taxes, health insurance taxes and fees paid for state policy of employment;
- (b) tax or similar payment evasion;
- (c) failing in fulfilling notification duty."

## 9. Relevant regulations on Advance Pricing Arrangements

Section 38nc of Act on Income Tax - binding consideration (Guidance D – 332)  
[http://www.financnisprava.cz/assets/cs/prilohy/d-zakony/Pokyn\\_D-332.pdf](http://www.financnisprava.cz/assets/cs/prilohy/d-zakony/Pokyn_D-332.pdf)

## 10. Links to relevant government websites

<http://www.mfcr.cz>  
<http://www.financnisprava.cz>

## 11. Other relevant information

Secondary and compensating year-end adjustments may result in double taxation. Two questionnaires launched by the EU Joint Transfer Pricing Forum (JTPF) in 2011 took stock of the situation prevailing in each EU Member State with respect to secondary and compensating year-end adjustments as on 1 July 2011.

[Secondary Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)

[Compensating/year-end Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)