

CZECH REPUBLIC

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

Section 23(7) Act on Income Tax:

If the prices agreed between associated persons differ from the prices that would be agreed between unassociated persons in normal business relations under the same or similar conditions, and if such difference is not satisfactorily substantiated, the tax base of the payer shall be adjusted by the ascertained difference. If the price that would be agreed between unassociated persons in normal business relations under the same or similar conditions cannot be determined, the price determined under a legal regulation regulating property valuation shall be used. The provisions of the first and second sentence shall not apply in the event of entering into a gratuitous bailment contract or a loan for use contract and in the event that the agreed amount of interest from a financial credit instrument between associated persons is lower than a price that would be agreed between unassociated persons, and the creditor is a tax non-resident or a member of a business corporation who is a tax resident of the Czech Republic, or a natural person income tax payer.

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

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 associated through capital
 1. where one person directly participates in the capital or voting rights of the other person, or where one person directly participates in the capital or voting rights of several persons; and where, simultaneously, this share constitutes at least 25 % of the registered capital or 25 % of the voting rights of such persons, then all such persons are persons directly mutually associated through capital,
 2. where one person indirectly participates in the capital or voting rights of the other person or where one person directly or indirectly participates in the capital or voting rights of several persons; and where, simultaneously, this share constitutes at least 25 % of the registered capital or 25 % of the voting rights of such persons, then all such persons are persons mutually associated through capital,
- (b) persons otherwise associated which are persons
 1. where one person participates in the management or control of another person,
 2. where identical persons or close persons participate in the management or control of other persons, then such other persons are persons otherwise mutually associated. Persons otherwise associated shall not be deemed to be persons where one person is a member of the supervisory boards of two persons,
 3. controlling and controlled and also persons controlled by the same controlling person,
 4. close,
 5. that created a legal relationship predominantly for the purpose of reducing a tax base or increasing a tax loss.

The share in the registered capital or the share with the voting right in the period of taxation or in the period for which a tax return is filed shall be set out as the arithmetic mean of monthly states. Participation in an audit committee or similar auditing body and the performance of an audit for a consideration shall not be deemed to be participation in 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

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:

https://ec.europa.eu/taxation_customs/sites/taxation/files/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:
https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/tpprofile-cz.pdf

8. Information on dispute resolution

Competent Authority

for MNE and transfer pricing cases:
Mr. Vítězslav Kapoun
Head of Direct Taxes International Taxation Unit – Direct Taxes
General Financial Directorate
Lazarská 7, 117 22 Prague 1
Czech Republic
Tel: +42029685 3424

e-mail: vitezslav.kapoun@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@mfcz.cz

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	<p>for MNE and transfer pricing cases: Taxation not in accordance with the provisions of the double tax treaties; interpretation and application of the DTA in cases which are not covered by the DTA. Negotiation of bilateral or multilateral APAs.</p> <p>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>
Domestic guidelines & administrative arrangements	<p>APA - Section 38nc of Act on Income Tax; Guidance D-32, Communication by the Ministry of Finance in respect of binding ruling on the transfer pricing policy used in related party transactions.</p>
Time for filing	<p>Keeping with the DTA provisions.</p>
Form of request	<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).</p> <p>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>
Documentation requirement	<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>
User fees	<p>10 000 CZK for APA</p>
Tax collection / penalty / interest	<p>Collection by the local competent tax administrator.</p>
Other dispute resolution mechanisms	<p>The EU Arbitration Convention for transfer pricing cases.</p>
Government Website	<p>http://www.financnisprava.cz http://www.mfcr.cz</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

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](#)

The Czech Republic may allow both active and passive presence of foreign officials. Definition of presence of foreign officials is stipulated in section 18 and 19 Act on International Cooperation in Tax Administration and on the amendment of further related Acts.