

## TRANSFER PRICING RULES IN EU MEMBER STATES

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### Abstract

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One of the important area of international taxes is transfer pricing. Transfer price is a price set by a taxpayer when selling to, buying from, or sharing resources with a related (associated) person. The transactions between these persons should be assessed at their arm's length price in according the arm's length principle – international accepted standard – as the price which would have been agreed between unrelated parties in free market conditions.

This paper is focused on the tranfer pricing rules used in particular EU Member States so as if EU Member States apply the arm's length principle, define the related persons, apply recommendations of the OECD Guidelines, use the transfer pricing methods, require TP Documentation, exercise specific transfer pricing audit or impose specific penalties and apply APAs.

Transfer pricing rules should prevent taxpayers from shifting income to related person organized in tax havens or in countries where they enjoy some special tax benefit.

transfer pricing, arm's length principle, APA, OECD Transfer pricing guidelines, multinational enterprises

At one time, international tax<sup>1</sup> issues were important to a rather small circle of tax specialists, primarily the tax advisers of large multinational enterprises (MNEs). As the countries of the world have become increasingly intergrated economically, the importance of these issues has mushroomed. Many small and medium size firms now engage in cross-border transactions that cause them to face international tax issues rather regularly.

In the international tax area there are exist a lot of issues, but one them transfer pricing<sup>2</sup> contin-

ues to be the most important international tax issue that many MNEs face. The vast majority of the interviewed MNEs believe that transfer pricing will be very important to their organizations over the next two years, while 65% of respondents believe that transfer pricing is more important today than it was two years ago, according to the 2007–2008 Transfer pricing Global survey by Ernst & Young. Why is transfer pricing so important for MNEs? MNEs use transfer pricing for sales and other transfers of goods and services their corporate group (inter-company

1 The term international tax encompasses all tax issues arising under a country's income tax laws that include some foreign element for examples the income tax aspects of cross-border trade in goods and servisecc, cross-border manufacturing by a multinational enterprise, cross-border investment by individuals or by investment funds and of course the taxation of individuals who work or do business outside the country where they usually reside. (B. J. Arnold, M. J. McIntyre; 2002).

2 Transfer price is a price set by a taxpayer when selling to, buying from, or sharing resources with a related person. Related persons should be defined to include two or more persons that are owned or controlled, directly or indirectly, by the same interests. A good indicator of such relationships is the ability to set transfer prices that differ from market prices. The market price is a price set in the marketplace for transfers of goods and services between unrelated persons... (B. J. Arnold, M. J. McIntyre; 2002).

transaction). Sometimes related persons engaged in cross-border transactions can avoid the income taxes of a country through their manipulation of transfer prices. For example, Aco might avoid paying income taxes in country A by setting a price on the sale of its manufactured goods to Bco that results in its earning little or no profit. If the effective tax rate in country B is lower than the effective tax rate in country A, then the total tax burden of the affiliated companies Aco and Bco would be reduced through the use of inappropriate transfer prices. If country B is a tax haven, then the affiliated companies would pay little or no tax on their combined profits.

Thereupon there is worldily widely used principle – arm's length principle – the basic transfer pricing rule used in international tax area. Under these principle, related taxpayers must set transfer pricing for any inter-company transaction as if they were unrelated entities all other aspects of the relationship were unchanged. This concept is set out definitively in art. 9 of the OECD Model Treaty which form the basis of many bilateral tax treaties.

In accordance with art. 9(2) and 25 of the OECD Model Treaty, most countries entering into tax treaties have committed themselves to consider making adjustments to the transfer prices used to compute taxable income of their taxpayers if those prices have been adjusted by a treaty partner in accordance with the arm's length principle. A modification to a transfer price used by one taxpayer to take account of a modification made to the transfer price used by an affiliated taxpayer is referred to as a "correlative adjustment".

In recent years, some countries have sought to reach agreement with their taxpayers on the methodologies to be used in setting transfer prices before a transfer pricing dispute has actually arisen. This is so-called "advance pricing agreement" (APA). In some instances, two or more governments may use the dispute-resolution mechanism in their tax treaties to agree jointly on the pricing methodology to be used by a taxpayer.

Notwithstanding, conflicts between countries over transfer prices are commonplace. That's why a few newer treaties do include a procedure for binding arbitration. This procedure is set out in art. 25 paragraph 5 of the OECD Model Treaty (update of the OECD Model Treaty in the 2008)

This paper is focused on Transfer pricing rules used in the EU member states which should prevent taxpayers (MNEs) from shifting income to related person organized in tax havens or in countries where they enjoy some special tax benefit – relatively low tax rate or tax holiday and so on. In general, the countries should protect their own tax revenues through using transfer pricing rules. The tax authorities should use transfer pricing procedures

to eliminate the erosion of the tax base in their countries. They should imposed penalties and adjustments in the course of an audit that can be so substantial that it may result in adverse effect on the company's performance and survival.

## MATERIALS AND METHODS

The basic source of my research was the OECD TP Guidelines<sup>3</sup>. The OECD has been working for many years to achieve an international consensus on transfer pricing rules. In 1979, the OECD published a report entitled *Transfer pricing and multinational enterprises*, which was supplemented in 1984. During 1992 and 1993 the OECD established a task force to review report, so in 1995 the OECD issued a major volume "Transfer pricing guidelines for multinational enterprises and tax administrations". Revisions were made in 1996, 1997, 1998 and 1999. In 2008 the OECD issued series of draft for comment, first is the *Transactional Profits Methods* and second *Transfer pricing aspects of business restructurings*. In this year 2009 was issued new edition of OECD TP Guidelines, amendments were made to Chapter IV, primarily to reflect the adoption (in the 2008 update of the OECD Model Treaty) of a new paragraph 5 of art. 25 dealing with arbitration, and of changes to the Commentary on art. 25 on mutual agreement procedures to resolve cross-border tax disputes. The OECD is currently undertaking an important further update to the OECD TP Guidelines.

My further sources of my research were EU recommendations, especially The Code of Conduct on transfer pricing documentation for associated enterprises in the EU, EC Arbitration Convention, OECD Model Treaty, single guidances of Ministry of Finance or relevant legislation dealing with transfer pricing rules in EU member states and particular OECD reports.

In this paper were used basic scientific methods such as analysis, synthesis, deduction, induction, description, comparison.

## RESULTS

Firstly, I would like to mention of transfer pricing rules generally. Mainly the OECD TP Guidelines and its application of the arm's length principle, comparability analysis, transfer pricing methods for determining the arm's length price, transfer pricing documentation, dispute prevention as an APA and in the end dispute resolution as Arbitration process.

Secondly, I focus on particular transfer pricing rules of EU member states.

The **OECD TP Guidelines** provide guidance on the application of the arm's length principle to the pricing, for tax purposes, of cross-border trans-

3 OECD TP Guidelines – „Transfer pricing guidelines for multinational enterprises and tax administrations" which was issued by the OECD in 1995.

actions between associated enterprises. In a global economy where multinational enterprises play a prominent role, governments need to ensure that the taxable profits of MNEs are not artificially shifted out of their jurisdiction and that the tax base reported by MNEs in their country reflects the economic activity undertaken therein. In other side, for taxpayers, it is essential to limit the risks of economic double taxation that may result from a dispute between two countries on the determination of the arm's length remuneration for their cross-border transactions with associated enterprises.

When transfer pricing does not reflect market forces and the **arm's length principle**, the tax liabilities of the associated enterprises and the tax revenues of the host countries could be distorted. Therefore, OECD member countries have agreed that for tax purposes the profits of associated enterprises may be adjusted as necessary to correct any such distortions and thereby ensure that the arm's length principle is satisfied. OECD member countries consider that an appropriate adjustment is achieved by establishing the conditions of the commercial and financial relations that they would expect to find between independent enterprises in similar transactions under similar circumstances. The authoritative statement of the arm's length principle is found in paragraph 1 of Article 9 of the OECD Model Treaty<sup>4</sup>. Attention is focused on the nature of the dealing between MNEs and on whether the conditions thereof differ from the conditions that would be obtained in comparable uncontrolled transactions. The analysis of the controlled and uncontrolled transactions, which is referred to as a "comparability analysis" is at the heart of the application of the arm's length principle. Unfortunately, there are some significant cases in which the arm's length principle is difficult and complicated to apply, for example, in MNEs dealing in the integrated production of highly specialised goods, in unique intangible, and/or in the provision of specialised services. A practical difficulty in applying the arm's length principle is that associated enterprises may engage in transactions that independent enterprises would not undertake. Such transactions may not necessarily be motivated by tax avoidance. In some cases it will be possible to apply the arm's length principle to arrive at a single figure (e.g. price or margin) that is the most reliable to establish whether the conditions of a transaction are arm's length. However, because transfer pricing is not an exact science, there will also be many

occasions when the application of the most appropriate method or methods produces a range of figures all of which are relatively equally reliable. In these cases, differences in the figures that comprise the range may be caused by the fact that in general the application of the arm's length principle only produces an approximation of conditions that would have been established between independent enterprises. It is also possible that the different points in a range represent the fact that independent enterprises engaged in comparable transactions under comparable circumstances may not establish exactly the same price for the transaction.

Application of the arm's length principle is generally based on **comparability analysis**<sup>5</sup>. In order for such comparisons to be useful, the economically relevant characteristics of the situations being compared must be sufficiently comparable<sup>6</sup>. In order to determine whether the comparison makes sense 5 relevant comparability factors were defined: characteristics of products / services, functional analysis, contractual terms, economics circumstances and business strategies. So, in determining whether controlled and uncontrolled transactions or entities are comparable, a functional analysis is necessary and the most important. This functional analysis seeks to identify and compare the economically significant activities and responsibilities undertaken, assets used and risks assumed by the parties to the transactions. It will also be to determine the legal rights and obligations of the taxpayer in performing its functions. The functions that taxpayers and tax administrations might need to identify and compare include e.g., design, manufacturing, assembling, research and development, servicing, purchasing, distribution, marketing, advertising, transportation, financing, and management. Usually, in the open market, the assumption of increased risk would also be compensated by an increase in the expected return. The search for information on potentially comparable uncontrolled transactions and the process of identifying comparables is dependent upon prior analysis of the taxpayer's controlled transaction and of the relevant comparability factors. It is the whole analytical process: the preliminary analysis of the conditions of the controlled transaction, the identification of potential comparables, the selection of the transfer pricing method and ultimately a conclusion.

OECD TP Guidelines study various **transfer pricing methods** for determining the arm's length price

4 OECD Model Treaty forms the basis of bilateral tax treaties involving OECD member countries and an increasing number of non-member countries.

5 Comparability analysis is a comparison of the conditions in a controlled transaction with the conditions in transactions between independent enterprises (uncontrolled transaction).

6 To be comparable means that none of the differences (if any) between the situations being compared could materially affect the condition being examined in the methodology, or that reasonably accurate adjustments can be made to eliminate the effect of any such differences. If there are significant differences in the risks assumed for which appropriate adjustments cannot be made, controlled and uncontrolled transactions and entities are not comparable.

on sales of tangible or intangible personal property. There are five preferred methods:

- Traditional transfer pricing methods:
  - The comparable uncontrolled price method CUP,
  - The resale price method RPM,
  - The cost plus method COST +,
- Transactional profit methods:
  - The profit-split method,
  - The transactional net margin method TNMM.

Traditional transaction methods and transactional profit methods can be used to establish whether the conditions imposed in the commercial or financial relations between associated enterprises are consistent with the arm's length principle. The selection transfer pricing methods always aims at finding the most appropriate method for a particular case. Nevertheless first three methods are extremely difficult, so it is impossible to apply in many important cases for example where there is no satisfactory evidence of CUP and where it is not possible to apply the resale price or cost plus methods. In these situations it is necessary to apply the two last methods, profit based methods, which are used more often than traditional transfer pricing methods.

Of course is very important for taxpayers maintain and be prepared to provide **documentation** regarding how its transfer prices were established and if transfer pricing policy is arm's length. OECD TP Guidelines provides direction for tax authorities on the development of the rules and procedures on transfer pricing documentation (TPD). Further in the EU the Council adopted a Code of conduct on transfer pricing documentation for associated enterprises<sup>7</sup> in the European Union (EU TPD). The purpose of the EU TPD is to standardize documentation that MNEs must provide to tax authorities and reducing the compliance costs of complying with transfer pricing documentation rules of various member states. The EU TPD concept consists of two main parts, Masterfile and country specific documentation. Each taxpayer should try to determine transfer pricing in accordance with the arm's length principle based upon information reasonably available at the time of the determination. The information needed will vary depending upon the facts and circumstances of the case.

Because conflicts between countries over transfer prices are commonplace. The United States established the formal **APA** programme as a dispute prevention. An APA is an administrative approach that attempt to prevent transfer pricing disputes from arising by determining criteria for applying the arm's length principle to transactions in advance of those transactions taking place. APAs can be uni-

lateral (where agreed between one tax administration and a taxpayer), bilateral (where agreed between two tax administrations with the taxpayer) and multinational (involving more than two tax administrations). The world's first advance pricing agreement as a prevention of disputes was concluded between the United States and Australia for Apple in 1991. The OECD supplemented its OECD TP Guidelines with an Annex containing Guidelines for conducting APAs under the mutual agreement procedure. Today a lot of states have formal APA programmes.

Now, I make a mention of dispute resolution – **EC Arbitration Convention** and **Arbitration process according art. 25 paragraph 5 OECD Model Treaty**. EC Arbitration convention was approved on 23th July 1990 by EU member states (Belgium, Denmark, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Portugal and UK). Of course with accession new member states was amended in November 2006. The Arbitration Convention is designed to apply in all situations in which profits subject to tax in one member state are subject to tax in another as a result of an adjustment to correct non-arm's length pricing arrangements. The Arbitration convention will not be applicable in any circumstance in which the authorities consider that the double taxation arises through deliberate manipulation of transfer prices.

Taking a due from EU Arbitration Convention, OECD countries have agreed to broaden the mechanisms available to taxpayers involved in cross-border disputes over taxation matters by introductions the possibility of arbitration if the other methods to resolve disagreements fail. So in 2008 was added new paragraph to the Mutual agreement procedure art. 25 (5) of the OECD Model Treaty which provides that in the event the competent authorities are not able to reach any agreement in relation to a case presented to the competent authority for resolution within a period of two years from presentation of the case it may be submitted to arbitration at the request of the taxpayers. The arbitration process must be completed and a mutual agreement must be concluded within 18 months from the submission of the request. The Arbitration convention can be used only for transfer pricing disputes.

In this second part I focus on particular transfer pricing rules in the EU member states. During my research I tried to answer on following questions:

If in the EU member states exist:

1. relevant provisions of domestic legislation referring to the Arm's Length Principle,
2. reference to the OECD TP Guidelines in domestic legislation,
3. relevant legislation containing a definition of related parties or associated enterprises,

<sup>7</sup> Associated enterprises is an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State ... full definition is in the OECD Model Treaty art. 9(1).



4. relevant legislation containing guidance on transfer pricing methods,
5. relevant regulations in relation to transfer pricing documentation requirements,
6. relevant regulations on specific transfer pricing audit procedures and / or specific transfer pricing penalties,
7. relevant regulations on Advance Pricing Arrangements.

Answer on information mentioned above are in Table I. – Transfer pricing rules in EU member states.

The arm's length principle apply all Member States besides Ireland because its definition of arm's length principle is so unreasonable in Ireland Corporate Income Tax Act that it is not applicable. Generally there are no specific transfer pricing rules in Ireland. Hence, the OECD Guidelines will be regarded as giving important guidance and accepted standard by tax authorities in the Ireland environment in the case of any dispute. Ireland as the member of OECD should be accept the organisation's guidelines.

The explicit reference to the OECD Guidelines is not staking out in domestic legislation of Ireland, Greece, Slovenia, Latvia, Luxembourg and Poland. However, their transfer pricing legislation if it exist and tax authorities have generally adopted the arm's length principle and methods provided by OECD Guidelines. In most of Member States were the OECD Guidelines published in administrative decrees or the OECD Guidelines have been borrowed as official regulations i.e. in Austria. In Lithuania, the OECD Guidelines were carried over into Lithuania transfer pricing legislation. Nevertheless, local rules take precedent and in the event of conflict with the OECD Guidelines.

All of Member States beside Austria have the definition of related persons or associated enterprises in domestic legislation which is usually corresponding provision to Art. 9 OECD Model Treaty. In Austria there is no specific definition of related parties, there is general reference to Art. 9 OECD Model Treaty. However Estonian tax legislation provides a rather broad definition of related person i.e. if there exist economic relationship between parties transfer pricing rules cannot be applicable because they are unrelated parties. Further Portuguese tax law contains comprehensive definition of related persons (associated enterprises). And according to the full extensive definition of related persons set in the Slovak Republic, all companies within the company group most likely as related parties.

Each of Member States applies the transfer pricing methods and relies on the general recommendation of the OECD Guidelines. Majority of Member States explicitly notice the transfer pricing methods in their domestic legislation which to be used for determining arm's length prices. Other Member States explicitly provide the reference to the OECD Guidelines.

All of Member States besides Ireland apply at least general rules on transfer pricing documentation. However, Ireland's taxpayers keep adequate documentation to be able to justify their pricing arrangements as being arm's length in response to any transfer pricing audits. In Latvia is the transfer pricing documentation in processing now. So for the time being Latvia's taxpayers and tax authorities rely on recommendation of the OECD Guidelines (Chapter 5). In most of Member States have been documentation requirements published in administrative decrees and have relied on the recommendation of the OECD guidelines and of the EU TP Documentation.

Only in Slovak Republic the tax authorities started to run special transfer pricing tax inspections. There exist a specialised group of staff to handle transfer pricing audits in Slovak Republic. In Belgium there has been created a specific transfer pricing audit team too that composed of 8 field auditors and 1 support staff and have been issued administrative guidelines on transfer pricing audits and documentation. The Spain's Corporate Income Tax Act states the basic principle of a specific transfer pricing audit procedure. The specific transfer pricing penalties have been applicable in the states: Germany, France, Slovenia, Denmark, Greece, Finland, the Netherlands, Hungary, Bulgaria and Romania as penalties for i.e.

- tax evasion, tax fraud, wrong information in tax return – Germany,
- failure to provide complete information to the tax authorities – France,
- if documentation is not available – Slovenia,
- the difference between the agreed transfer prices and the market price – Greece, Lithuania, Bulgaria, the Netherlands,
- failure to comply with the transfer pricing documentation requirements – Hungary,
- failure to present the transfer pricing documentation file – Romania.

Currently, there are no provisions enabling taxpayers to negotiate Advance Pricing Arrangements with the tax authorities in Estonia, Ireland, Slovenia, Denmark, Greece, Sweden, Latvia and Bulgaria. However, it is possible to obtain an opinion from the tax authorities on a case-by-case as a unilateral APA in Bulgaria, Denmark, Ireland and Sweden. Also it is possible to apply for bilateral APA only with countries with which state has tax treaties, in accordance with the Art. 25 OECD Model Treaty (Mutual Agreement Article). In Latvia there the Cabinet of Ministers has drafted APA rules. Nevertheless, in practice these rules are used rarely for negotiating advance pricing arrangements in Latvia. Further, the Lithuania's Ministry of Finance to set up the framework for a more formal APA system. Other Member States have relevant regulations on Advance Pricing Arrangements i.e. bilateral APAs are pursued on the basis of Art. 25 OECD Model Treaty in Austria and Germany.

I: *Transfer pricing rules in EU member states*<sup>8</sup>

Member States	Arm's length principle	Reference to the OECD Guidelines	Statement of related parties	TP methods	TP Documentation	Specific TP audit procedures / penalties	APAs
<b>Austria</b>	yes	yes	reference art. 9 OECD Model Treaty	reference to the OECD Guidelines	yes	no	yes, bilateral
<b>Belgium</b>	yes	yes	yes	reference to the OECD Guidelines	yes	yes / no	yes
<b>Bulgaria</b>	yes	yes	yes	yes	yes	no / yes	yes
<b>Czech Republic</b>	yes	yes	yes	yes, reference to the OECD Guidelines	yes	no / yes	yes
<b>Denmark</b>	yes	yes	yes	reference to the OECD Guidelines	yes	no / yes	no
<b>Estonia</b>	yes	yes	yes	yes	yes	no	no
<b>Finland</b>	yes	yes	yes	reference to the OECD Guidelines	yes	no / yes	yes
<b>France</b>	yes	yes	yes	reference to the OECD Guidelines	yes	no / yes	yes
<b>Germany</b>	yes	yes	yes	yes, reference to the OECD Guidelines	yes	no / yes	yes, bilateral
<b>Greece</b>	yes	no	yes	yes	yes	no / yes	no
<b>Hungary</b>	yes	yes	yes	yes	yes	no / yes	no
<b>Italy</b>	yes	yes	yes	reference to the OECD Guidelines	yes	no	yes
<b>Ireland</b>	yes	no	yes	yes	no	no	no
<b>Latvia</b>	yes	no	yes	yes	in process	no	in process
<b>Lithuania</b>	yes	yes	yes	yes	yes	no / yes	in process
<b>Luxembourg</b>	yes	no	yes	yes	yes	no	yes, unilateral
<b>The Netherlands</b>	yes	yes	yes	yes, reference to the OECD Guidelines	yes	no / yes	yes
<b>Poland</b>	yes	no	yes	yes	yes	no / yes	yes
<b>Portugal</b>	yes	yes	yes	yes	yes	no	yes
<b>Romania</b>	yes	yes	yes	yes	yes	no / yes	yes
<b>Slovak Republic</b>	yes	yes	yes	yes	yes	yes / no	yes, unilateral
<b>Slovenia</b>	yes	no	yes	yes	yes	no / yes	no
<b>Spain</b>	yes	yes	yes	yes	yes	yes / no	no
<b>Sweden</b>	yes	yes	yes	reference to the OECD Guidelines	res	no	no
<b>U.K.</b>	yes	yes	yes	reference to the OECD Guidelines	no	no	yes

<sup>8</sup> Source: Real construction contract from information noticed in particular reports OECD, guidelines of Ministry of Finance and relevant legislation of EU Member States

## CONCLUSION

International tax issues already have not been problems of narrow circle of Multinational Enterprises. The effect of globalizace and international business development causes that many small and medium size firms now engage in cross-border transactions that cause them to face international tax issues rather regularly.

One of the important area of international taxes is transfer pricing. Transfer price is a price set by a taxpayer when selling to, buying from, or sharing resources with a related (associated) person. The transactions between these persons should be assessed at their arm's length price in according the arm's length principle – international accepted standard – as the price which would have been agreed between unrelated parties in free market conditions.

This paper is focud on the tranfer pricing rules used in particular EU Member States so as if EU Member States apply the arm's length principle, define the related persons, apply recommendations of the OECD Guidelines, use the transfer pricing methods, require TP Documentation, exercise specific transfer pricing audit or impose specific penalties and apply APAs.

Transfer pricing rules should prevent taxpayers from shifting income to related person organized in tax havens or in countries where they enjoy some special tax benefit i.e. relatively low tax rate or tax holiday and so on. The associated enterprises are conscious of seriousness of the transfer pricing issue, because imposed penalties and adjustments in the course of an audit that can be so substantial that it may result in adverse effect on the company's performance and survival.

The arm's length principle apply all Member States besides Ireland because its definition of arm's length principle is not applicable. The explicit reference to the OECD Guidelines is not staking out in some domestic legislation. However, their transfer pricing legislation if it exist and tax authorities have generally adopted the arm's length principle and methods provided by OECD Guidelines. In most of Member States were the OECD Guidelines published in administrative decrees or the OECD Guidelines have been borrowed as official regulations. All of Member States beside Austria have the definition of related persons or associated enterprises in domestic legislation which is usually corresponding provision to Art. 9 OECD Model Treaty. In Austria there is general reference to Art. 9 OECD Model Treaty. Each of Member States applies the transfer pricing methods and relies on the general recommendation of the OECD Guidelines. Majority of Member States explicitly notice the transfer pricing methods in their domestic legislation which to be used for determining arm's length prices. Other Member States explicitly provide the reference to the OECD Guidelines. All of Member States apply at least general rules on transfer pricing documentation. In most of Member States have been documentation requirements published in administrative decrees and have relied on the recommendation of the OECD Guidelines and of the EU TP Documentation.

Only in Slovak Republic and in Spain the tax authorities started to run special transfer pricing tax inspections. The specific transfer pricing penalties have been applicable only in some states as penalties for not complying the arm's length principle and TP requirements.

Currently, there are no provisions enabling taxpayers to negotiate Advance Pricing Arrangements with the tax authorities in each Member State. However, it is possible to obtain an opinion from the tax authorities on a case-by-case. Other Member States have relevant regulations on Advance Pricing Arrangements i.e. bilateral APAs are pursued on the basis of Art. 25 OECD Model Treaty.

On the basis of my research I can say that transfer pricing rules in EU Member states are under the recommendations of the OECD Guidelines to be dealt with these issues for long time. The tax authorities have possibilities of prevent taxpayers from shifting income to related person from their states.

## SOUHRN

### Pravidla převodních cen v členských státech EU

Problematika mezinárodního zdanění se už netýká jen úzkého kruhu – nadnárodních společností. Vlivem rostoucí globalizace a rozvoji mezinárodního obchodu se nyní i malé a střední podniky stále více se zapojují do zahraničních transakcí a čelí tak problémům z oblasti mezinárodního zdanění.

Jedna z významných oblastí mezinárodního zdanění je tzv. transfer pricing neboli převodní ceny, které lze definovat jako ceny uplatňované u transakcí uskutečněných mezi dvěma daňovými subjekty ekonomicky nebo personálně spojenými. Tyto ceny musejí být stanoveny ve stejné výši, jako by byly sjednávány mezi subjekty, které nejsou ekonomicky či personálně spojené a odpovídají tedy principu tržního odstupu, mezinárodně uznávaného standardu.

V příspěvku jsou uvedena pravidla převodních cen jednotlivých členských států EU, a to zda uplatňují princip tržního odstupu, definovaly spojené osoby, využívají doporučení z OECD Směrnice, aplikují transfer pricing metody, vyžadují transfer pricing dokumentaci, vykonávají specifický audit či ukládají specifické pokuty nebo zda uplatňují APA proceduru. Užívání těchto pravidel by mělo zabránit daňovým poplatníkům převést daňové zisky spojené osobě umístěné v jurisdikci s nižším

zdaněním nebo v zemi, kde jí budou plynout lepší daňová zvýhodnění např. v podobě daňových prázdnin.

Spojené osoby si vážnost problematiky převodních cen plně uvědomují, neboť případné dorovnání daně včetně penále uvalené na základě výsledků daňové kontroly by mělo zcela negativní vliv na jejich budoucí ekonomický a finanční vývoj.

Princip tržního odstupu aplikují všechny členské státy EU kromě Irska, neboť irské ustanovení o tržním odstupu je v praxi neaplikovatelné. Přímý odkaz na OECD Směrnici nemají ve své legislativě uvedeny všechny státy, přesto přijaly do svých legislativ princip tržního odstupu a transfer pricing metody vhodné pro stanovení výše zmíněného principu. Ostatní členské státy OECD Směrnici vydaly v podobě pokynů ministerstva financí nebo ji zcela přijaly jako oficiální regulaci. Všechny členské státy kromě Rakouska mají definici spojených či sdružených osob v legislativě, která je v souladu s článkem 9 OECD Modelové smlouvy, Rakousko se přímo na článek v ní odkazuje. Všechny státy aplikují transfer pricing metody, většina z nich je taxativně vymezuje a ostatní se odkazují na OECD Směrnici. Členské státy uplatňují všeobecná pravidla týkající se TP Dokumentace. Ve většině z nich byly vydány požadavky na TP Dokumentaci v podobě pokynů ministerstva financí, které vychází z doporučení uvedených v OECD Směrnici nebo v EU TP Documentaci. Pouze na Slovensku a ve Španělsku je stanovena speciální procedura auditu. Speciální pokuty udělují jen vybrané státy a jedná se především o pokuty za nedodržení principu tržního odstupu či požadavků na TP Dokumentaci. APA procedura není aplikovatelná ve všech členských státech, ale existuje možnost získat alespoň závazné posouzení od správce daně. Zavedený APA systém v ostatních členských státech je v souladu s ustanovením v článku 25 OECD Modelové smlouvy.

Na základě zjištěných výsledků je zřejmé, že pravidla převodních cen v jednotlivých členských státech EU jsou v souladu s doporučením OECD, která se problematikou dlouhodobě zabývá, a správci daně mají možnosti, jak zabránit přesunu daňových zisků z jejich států.

převodní ceny, princip tržního odstupu, předběžné cenové dohody – APA, OECD Směrnice o převodních cenách, sdružené podniky

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