

# Mutual Cooperation of Financial Administrations in Transfer Pricing

## – Experience of the Czech Financial Administration

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# Tax authorities fight for multinational corporations taxes

## Transfer pricing

- Is not primarily a fight between taxpayers and tax authority, but
- tax authorities fight for a bigger part of tax „cake“

e.g. Apple, Starbucks, Fiat, McDonald's cases etc., where MNEs entered into the agreement with some states (Ireland, Benelux, ...) about favorable tax conditions which resulted in transfer of profits into this countries.



Another example is using of countries with preferential tax regime.

In these cases other involved countries should cooperate.

# What are ways of cooperation?

- Exchange of information on request
- Exchange of tax rulings – from 2017
- CbCR – from 2018 (for 2016)
- Simultaneous tax audits
- MLC
- Joint audits
- Bilateral APA
- Bilateral MAP – from 1.7.2019 a new law

# **Tax rulings (DAC 3)**

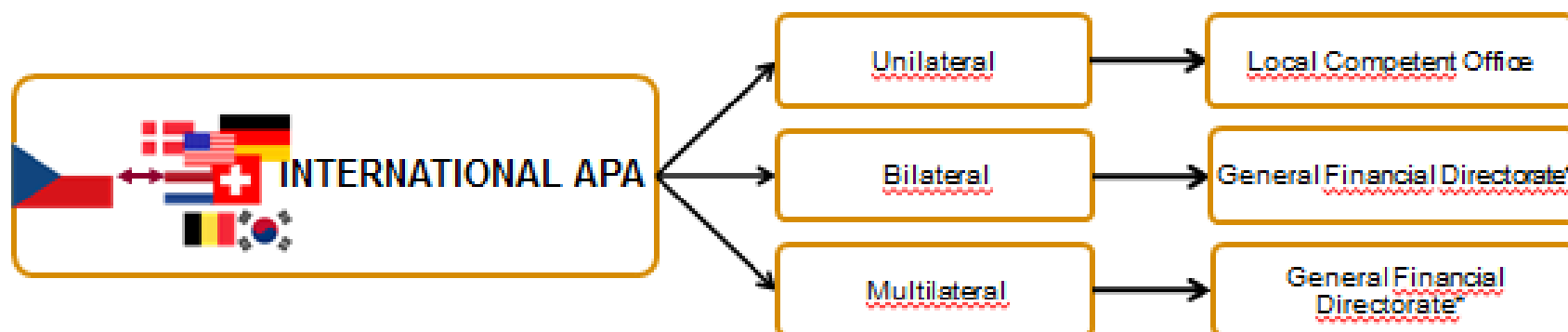
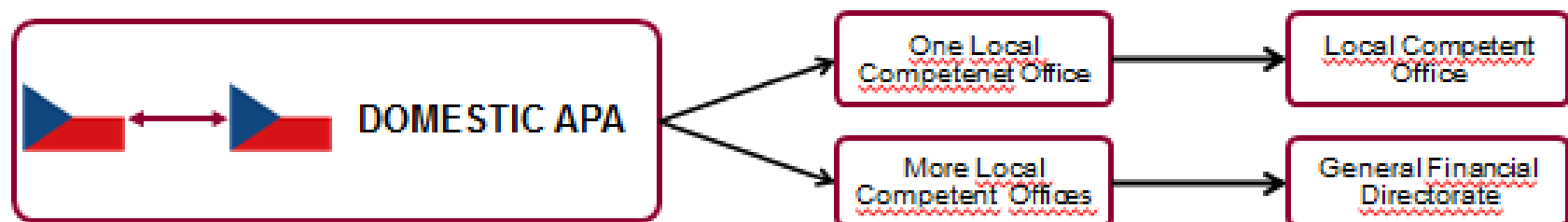
# DAC3 (rulings)

- The amendment of the Council Directive 2011/16/EU, DAC3

It is applied for:

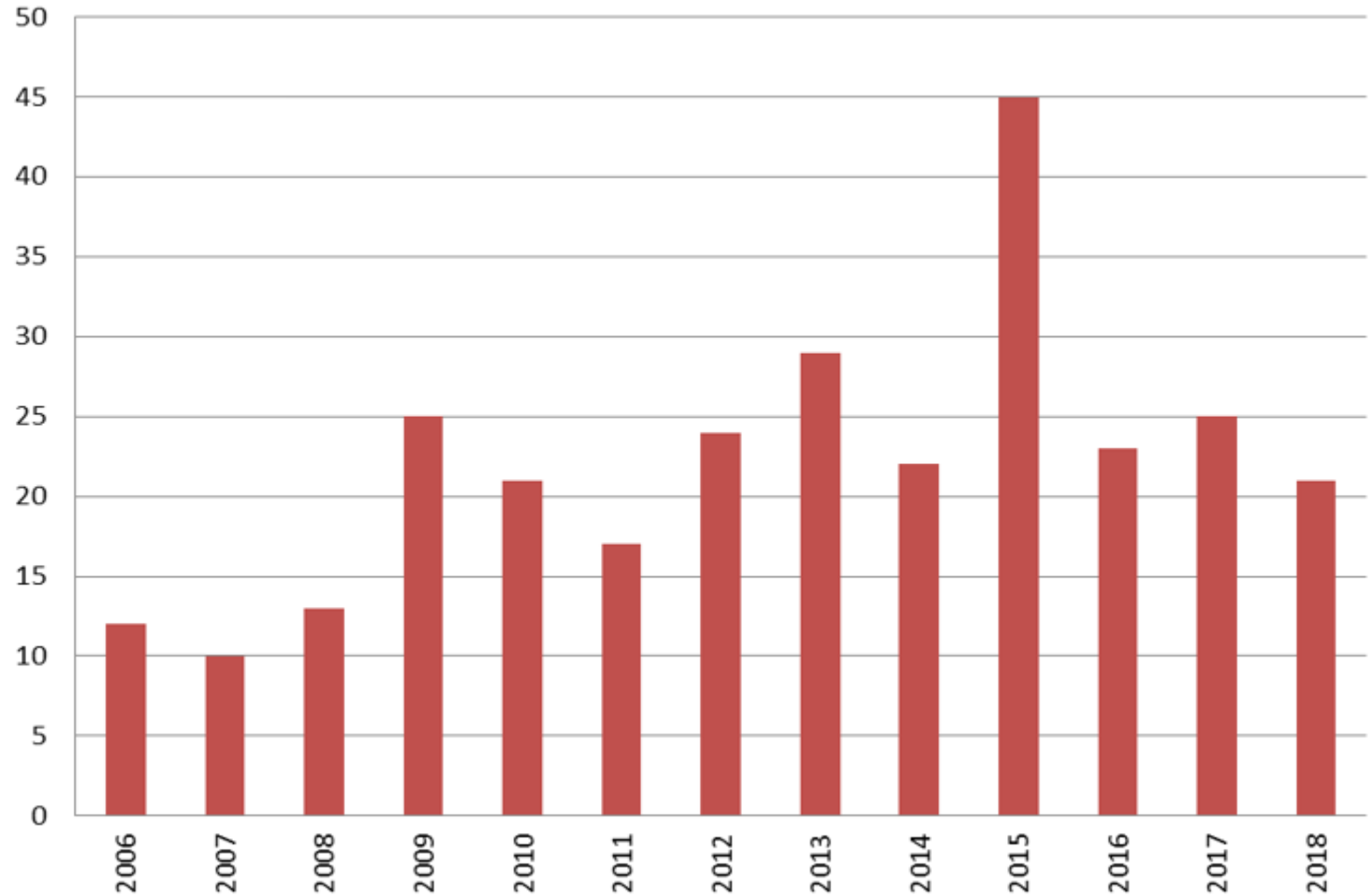
- Advanced cross-border rulings
  - any agreement which is issued by the government
  - to the particular person
  - concerns the interpretation of a legal provision
  - relates to a cross-border transaction
  - is made in advance
- From the Czech perspective
  - Only transfer pricing APAs

# Competent Authorities



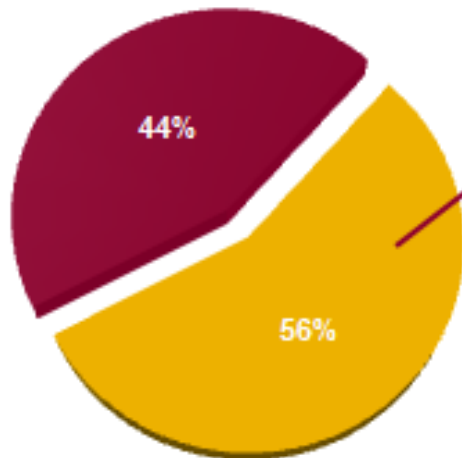
\* In cooperation with local competent office

# APA Statistics 2006 – 2018



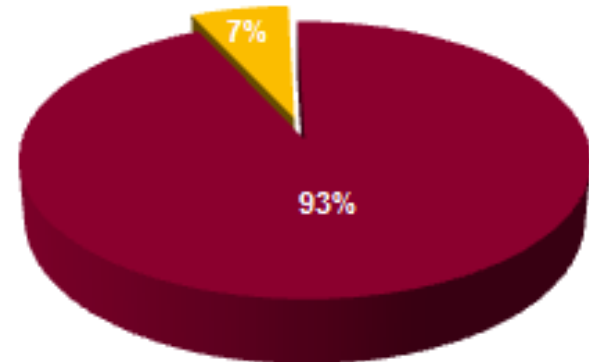
# APA Statistics 2006 – 2018

DOMESTIC X INTERNATIONAL APAs



■ INTERNATIONAL ■ DOMESTIC

BILATERAL X UNILATERAL APAs

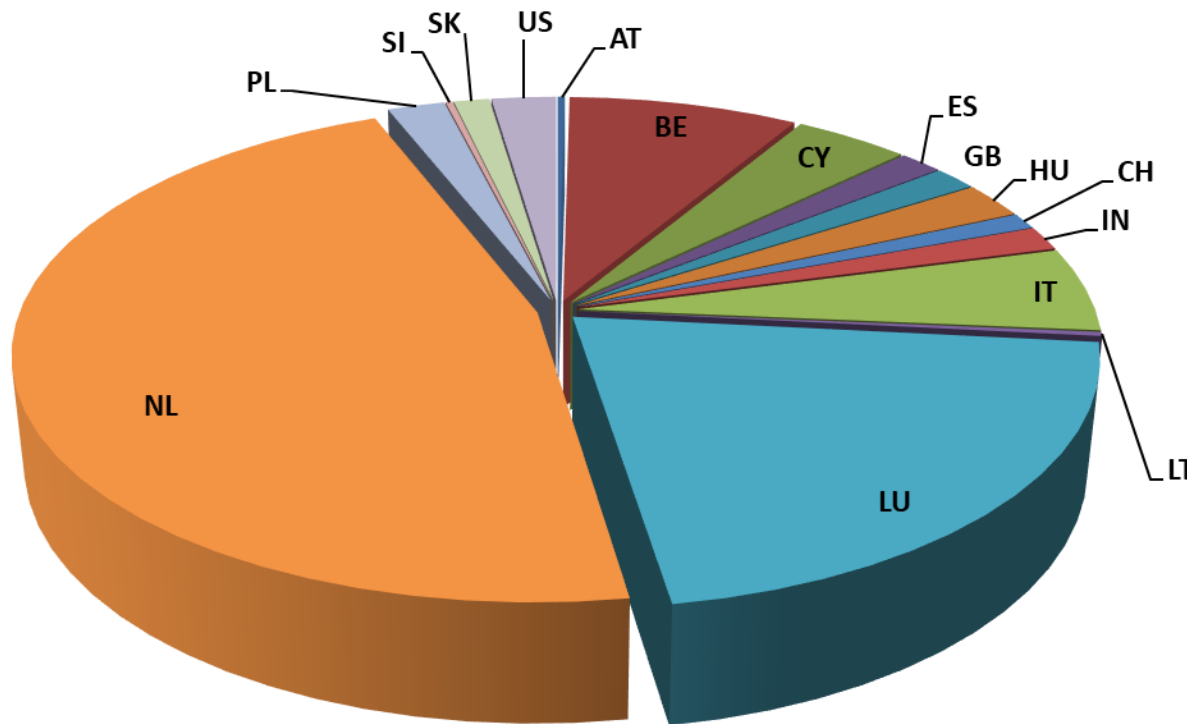


■ BAPA ■ UNILATERAL APA



# The statistic of incoming Rulings

from 10/2016 to 12/2018



| Country      | Number     |
|--------------|------------|
| AT           | 1          |
| BE           | 32         |
| CY           | 16         |
| ES           | 6          |
| GB           | 6          |
| HU           | 9          |
| CH           | 4          |
| IN           | 6          |
| IT           | 21         |
| LT           | 1          |
| LU           | 80         |
| NL           | 178        |
| PL           | 8          |
| SI           | 1          |
| SK           | 5          |
| US           | 9          |
| <b>Tolat</b> | <b>383</b> |

|              |            |
|--------------|------------|
| <b>2016</b>  | <b>83</b>  |
| <b>2017</b>  | <b>221</b> |
| <b>2018</b>  | <b>79</b>  |
| <b>Total</b> | <b>383</b> |

# **Country – by – Country Reporting**

# CbC Reporting - implementation

- According to the OECD
  - For the first time on 1 January 2018 for fiscal year 2016
  - The parent company of each multinational group with total revenues of more than 750 milion EURO works out the report
  - The tax administration of the parent company distributes the CbCR to all states where other members of the group are seated
- Implementation in the CZ
  - Accession to the Multilateral Agreement - 1/2016
  - First exchange of information for the year 2017

# MODEL TEMPLATE FOR THE COUNTRY-BY-COUNTRY REPORT

**Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction**

| Name of the MNE group:<br>Fiscal year concerned: |                 |               |       |                                 |                                 |                                   |                |                      |                     |  |
|--|-----------------|---------------|-------|---------------------------------|---------------------------------|-----------------------------------|----------------|----------------------|---------------------|--|
| Tax Jurisdiction                                 | Revenues        |               |       | Profit (Loss) Before Income Tax | Income Tax Paid (on cash basis) | Income Tax Accrued – Current Year | Stated capital | Accumulated earnings | Number of Employees | Tangible Assets other than Cash and Cash Equivalents |
|  | Unrelated Party | Related Party | Total |                                 |                                 |                                   |                |                      |                     |  |
|  |                 |               |       |                                 |                                 |                                   |                |                      |                     |  |
|  |                 |               |       |                                 |                                 |                                   |                |                      |                     |  |
|  |                 |               |       |                                 |                                 |                                   |                |                      |                     |  |
|  |                 |               |       |                                 |                                 |                                   |                |                      |                     |  |

GUIDANCE ON TRANSFER PRICING DOCUMENTATION AND COUNTRY-BY-COUNTRY REPORTING © OECD 2014

# MODEL TEMPLATE FOR THE COUNTRY-BY-COUNTRY REPORT

**Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction**

| Name of the MNE group:<br>Fiscal year concerned: |   |   |                             |   |                           |                             |                                  |  |  |                        |                              |           |  |         |                    |
|--|---|---|-----------------------------|---|---------------------------|-----------------------------|----------------------------------|--|--|------------------------|------------------------------|-----------|--|---------|--------------------|
| Tax Jurisdiction                                 | Constituent Entities resident in the Tax Jurisdiction | Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence | Main business activity(ies) |   |                           |                             |                                  |  |  |                        |                              |           |  |         |                    |
|  |   |   | Research and Development    | Holding or Managing intellectual property | Purchasing or Procurement | Manufacturing or Production | Sales, Marketing or Distribution | Administrative, Management or Support Services | Provision of Services to unrelated parties | Internal Group Finance | Regulated Financial Services | Insurance | Holding shares or other equity instruments | Dormant | Other <sup>2</sup> |
|  | 1.  |   |                             |   |                           |                             |                                  |  |  |                        |                              |           |  |         |                    |
|  | 2.  |   |                             |   |                           |                             |                                  |  |  |                        |                              |           |  |         |                    |
|  | 3.  |   |                             |   |                           |                             |                                  |  |  |                        |                              |           |  |         |                    |
|  | 1.  |   |                             |   |                           |                             |                                  |  |  |                        |                              |           |  |         |                    |
|  | 2.  |   |                             |   |                           |                             |                                  |  |  |                        |                              |           |  |         |                    |
|  | 3.  |   |                             |   |                           |                             |                                  |  |  |                        |                              |           |  |         |                    |

# Joint audits

# Joint audits

A joint audit is where:

- two or more countries join together to form a single audit team to examine an issue(s) / transaction(s) of one or more related taxable persons (both legal entities and individuals) with cross-border business activities, perhaps including cross-border transactions involving related affiliated companies organized in the participating countries and in which the countries have a common or complementary interest;
- the taxpayer jointly makes presentations and shares information with the countries; and
- the joint audit team includes Competent Authority representatives, joint audit team leaders and examiners from each country.

(OECD FTA Joint Audit Report, Sept. 2010)

# Joint audits – legal framework

- Double Tax Treaties
  - OECD Model Tax Convention on Income and on Capital incl. Commentary
- Tax Information Exchange Agreement (TIEA)
  - Exchange of Information on request, Tax investigation abroad
    - TIEA CZ – Bermuda:
      - 1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the prior written consent of the persons concerned. ...
      - 2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.
- Convention on Mutual Administrative Assistance in Tax Matters
  - Contains all kinds of mutual cooperation incl.
    - Art 8 – Simultaneous tax examinations
    - Art 9 – Tax examinations abroad
      - (1) At the request of the competent authority of the applicant State, the competent authority of the requested State may allow representatives of the competent authority of the applicant State to be present at the appropriate part of a tax examination in the requested State.
- Council Directive 2011/16/EU



# Užší spolupráce s Německem

- 7.9.2018 schůzka se zástupci Německa
  - Spolkové MF, Spolkový FÚ, zemská MF Bavorska a Saska
  - MF ČR, GfR
- Požadavek DE
  - Joint audits
- Doplněn požadavek ČR
  - Přejednání MoU – přeshraniční spolupráce
- Výstupy jednání/zápis
- Pro rozvoj užší spolupráce bude sestavena pracovní skupina ze zástupců obou stran, která vypracuje návrh na budoucí spolupráci.
- Na základě výsledků projektu bude aktualizováno Memorandum o porozumění mezi německým Spolkovým ministerstvem financí a příslušným úřadem České republiky o vzájemné administrativní pomoci z roku 2005 - Přislíbeno do konce roku 2018
- Hlavním zaměřením budou přeshraniční daňové kontroly v oblasti přímých daní.
- Pozornost se proto zaměří na prohloubení přímých kontaktů mezi českými a německými kontrolory

# Experience of the Czech Financial Administration with Joint Audits

- We participated in several MLCs in the field of transfer pricing
  - Especially focused on tax havens
  - For solving intragroup services
- Closer cooperation with Germany and with the Slovak Republic
  - It is created a working group for better cooperation with Germany
  - Setting of the rules of cooperation
  - How to select taxpayers for the joint audits