

# **Problematic aspects of domestic transfer pricing legal regulations**

Visegrad Fund project  
TRANSFER PRICING IN V4 COUNTRIES



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# Structure of the presentation

- Introduction
- Domestic legal regulation of transfer pricing in the Czech Republic
- Problematic issues
- Discussion and conclusions

# Introduction

- A tax shall be levied on the basis of an act only.
  - Sec. 11 para 5 of the Bill of Fundamental Rights and Freedoms
- If a treaty provides something other than that which an act provides, the treaty shall apply.
  - Art. 10 of the Constitution of the Czech Republic

# Domestic legal regulation (Czech Republic)

- Domestic material legal regulation (an act)
  - Act No. 586/1992 Coll., on the Income Tax Act, as amended
    - Arm's length principle (sec. 23 para. 7)
    - Definition of associated persons (sec. 23 para. 7)
    - Binding ruling (Sec. 38nc)

# Domestic legal regulation (Czech Republic)

- Domestic procedural legal regulation (an act)
  - Act No. 280/2009 Coll., Tax Procedural Code, as amended
    - Burden of proof (Sec. 92)
    - General legal regulation (general clauses) for binding ruling (Sec. 132 et seq.)

# Domestic legal regulation (Czech Republic)

- A series of the „D“ series guidances

| Guidance<br>(year of its<br>publishing) | Areas covered  |
|---|--|
| D-10 (2012)                             | Safe-harbours (Low Value Adding Intra-Group Services)  |
| D-22 (2015)                             | Guidelines for the implementation of the provisions of the Income Tax Act.   |
| D-32 (2018)                             | Binding Ruling on transfer pricing and setting the tax base of a permanent establishment of a tax non-resident.  |
| D-34 (2019)                             | Communication on the implementation of the international standards for taxation of the transaction between associated persons. It covers also the guidelines for the application of the methods for the determination of the transfer price. |
| D-334 (2010)                            | Scope and form of transfer pricing documentation.<br>A new guidance (D-35) under preparation.  |

# Problematic issues

- Legal position of the **OECD standards**
  - OECD standards and the Czech tax domestic law (?)
  - An application of the OECD standards within the relationship with an international element without any problem (?)

# Problematic issues

- Definition of the **associated persons**
  - A very broad one
    - ... including „*Persons that created a legal relationship predominantly for the purpose of reducing a tax base or increasing a tax loss.*“ (Sec. 23 para. 7 letter b) issue 5. of the Income Tax Act)
  - A part of the definition quite useless due to other related legal regulation



# Problematic issues

- Definition of the **associated persons**
  - Solution in case of the collision with the definition as embodied under Art. 9 of a DTT
    - Is there such a thing?

# Problematic issues

- Existence of **different rules**
  - Income Tax Act

VS

- Value Added Tax

# Problematic issues

- **Missing explicit** procedural legal regulation
  - APA as set by the OECD standards is missing (Binding Ruling)
  - Missing explicitly stated rules for MAP, bilateral and multilateral APAs
    - A breach of the principle of legitimate expectations (?)
    - Partly remedied by the implementation of the Directive for Tax Dispute Resolutions

# Discussion and conclusions

- Legal position of the OECD standards
- Definition of the associated persons
- Different rules (Income Tax vs Value Added Tax)
- Missing explicit procedural rules

# References

- Act No. 586/1992 Coll., on Income Tax Act, as amended
- Act No. 280/2009 Coll., Procedural Tax Code, as amended
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**thank you for  
your attention**

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