

## TP documentation and its importance for tax control in the Czech Republic and abroad

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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.

## Why to work out the documentation?

- ✓ Eliminating the threat of additional taxation,
- ✓ A higher degree of certainty,
- ✓ Assist in solving TP problems,
- ✓ A useful tool for evidence in tax proceedings,
- ✓ Minimizes the risk of sanctions,
- ✓ A better cooperation with tax administration.

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## TP documentation (TPD)

A uniform template of TPD can not be determined  
– different transactions, conditions, size of taxpayers,  
market, functional profile, ....

Chapter V. OECD TP Guidelines (2017)

- recommendation on content and scope

EU Transfer Pricing Documentation

- recommendation applied by member states in practice

Instruction D-334

- implementation of EU TPD recommendation

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## Targets of OECD TP Documentation

- Ensure that taxpayers paid attention to the correct pricing between related parties and their reporting.
- Provide enough information needed for risk analysis to tax authorities.
- Provide information needed for the purposes of TP audit by tax authorities.

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## BEPS and change of TPG

1. Master file
  - Same for all tax authorities
  - Information about the group, intangibles, financial activities, ...
2. Local file
  - Information about the domestic company
  - Information about the transaction – method, price, ...
3. Country-by-Country Reporting
  - Financial data of all members of the group

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## BEPS and change of TPG

- The effort to commit all participating countries in the BEPS project to introduce all three parts into their legislations.
- Implementation of this point should be completed by 2020 at the latest.

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## 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 million EURO completes the report
  - The tax administration of 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

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## 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

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## 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 activities) |   |                           |                             |                                  |  |  |                        |                              |           |  |         |        |  |
|  |   |   | 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? |  |
|  | 1.  |   |                           |   |                           |                             |                                  |  |  |                        |                              |           |  |         |        |  |
|  | 2.  |   |                           |   |                           |                             |                                  |  |  |                        |                              |           |  |         |        |  |
|  | 3.  |   |                           |   |                           |                             |                                  |  |  |                        |                              |           |  |         |        |  |
|  | 1.  |   |                           |   |                           |                             |                                  |  |  |                        |                              |           |  |         |        |  |
|  | 2.  |   |                           |   |                           |                             |                                  |  |  |                        |                              |           |  |         |        |  |
|  | 3.  |   |                           |   |                           |                             |                                  |  |  |                        |                              |           |  |         |        |  |

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# Obligation to make Transfer Pricing Documentation in the Czech Republic



## Documentation in the EU

### EU Transfer Pricing Documentation

- Master file and Local file
- Without burdening small entities
  
- The obligation to prepare a TPD is not implemented only in 5 countries of the EU
  - Luxemburg, Cyprus, Malta, Latvia and the Czech Republic
  - <https://www.oecd.org/countries/singapore/transfer-pricing-country-profiles.htm>
  
- CbCR was implemented by the amendment of Act No. 164/2013



## Documentation

The Czech legislation does not impose the obligation to keep documentation, but

- Pursuant to the Section 23 para.7 ITA the taxpayer is obliged to satisfactorily prove (document) the difference between the price agreed and the usual price
- Pursuant to the Section 92 of the Code of Civil Procedure, the taxpayer proves the facts which are necessary for the correct assessment of the tax

✓ Summary for evidence for the tax audit

✓ The basis for mandatory assessment and APA

(Advance Pricing Agreement)

✓ The basis for MAP (Mutual Agreement Procedure)

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## TP annex of the Tax Return

The obligation to fulfill the TP annex has a taxpayer who will meet at least one of this criteria:

- a) **assets** > 40 mil. CZK,
- b) **turnover** > 80 CZK or
- c) the average number of employees > 50.

And provided that:

- 1) he realized a transaction with a related party **abroad**.
- 2) he had a **loss** and simultaneously realized a transaction with a related party,
- 3) he was a recipient of an **investment incentive** in the form of remission of taxes and simultaneously realized a transaction with a related party.

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## TP annex of Tax Return

[http://www.financnisprava.cz/assets/cs/prilohy/ms-prime-dane/Prehled-transakci-25\\_5404-E-MFin-5404-E\\_v1.pdf](http://www.financnisprava.cz/assets/cs/prilohy/ms-prime-dane/Prehled-transakci-25_5404-E-MFin-5404-E_v1.pdf)

see instructions before filling, please

Identification number: \_\_\_\_\_

**Summary of transactions with the related person**

01 Name of the related person: \_\_\_\_\_

02 Identification number of the related person: \_\_\_\_\_

03 Place of business - Country: \_\_\_\_\_ Country code: \_\_\_\_\_

**A Transaction with the related person**

| Row | Name of item                           | In thousand of CZK |                  |
|-----|--|--------------------|------------------|
|     |  | Revenues           | Acquisition cost |
| 1   | Long-term intangible assets            |                    |                  |
| 2   | Long-term tangible assets              |                    |                  |
| 3   | Long-term financial assets             |                    |                  |
| 4   | Stock of materials, products and goods |                    |                  |

**B Transaction with the related person**

| Row | Name of item                       | In thousand of CZK |       |
|-----|------------------------------------|--------------------|-------|
|     |                                    | Revenues           | Costs |
| 1   | Services                           |                    |       |
| 2   | License fees (including software)  |                    |       |
| 3   | Interests                          |                    |       |
| 4   | Total volume of other transactions |                    |       |

**C Transaction with the related person**

| Row | Name of item                                   | In thousand of CZK |          |
|-----|--|--------------------|----------|
|     |  | Received           | Paid     |
| 1   | Financial credit instruments                   |                    |          |
| 2   | Shares of profit                               |                    |          |
| 3   | Other parts of equity                          | Increase           | Decrease |
| 4   | Providing gratuitous performance <sup>*)</sup> | Yes                | No       |
| 5   | Receiving gratuitous performance <sup>*)</sup> | Yes                | No       |
| 6   | Using of cash-pooling <sup>*)</sup>            | Yes                | No       |

\*) Delete if not applicable

**D Liabilities and receivables towards the related person without a financial credit instruments**

| Row | Name of item           | In thousand of CZK                       |  |
|-----|------------------------|--|--|
|     |                        | Balance at the end of the current period | Balance at the end of the preceding period |
| 1   | Long-term receivables  |  |  |
| 2   | Long-term liabilities  |  |  |
| 3   | Short-term receivables |  |  |
| 4   | Short-term liabilities |  |  |

## Is the obligation to prepare a TPD needed?

### Risks

- Administrative burdens
- The subsidiary may not have a master file

### Positives

- A better position during proving
- Reduction of the duration of a tax audit – it means a reduction of administrative burdens

### Challenges

- Sufficiently precise definition of what have to be included
- The necessity of setting penalties for failure to supply or for submitting irrelevant documents
- When the TPD should be prepared?

