

**Ministry of Finance**  
Direct Taxes Department

*Ref. no.: 39/ 86 838/2009-393*

**Guidance D – 333**  
**Communication by the Ministry of Finance in respect of Binding Ruling on transfer price in related parties' transactions**

In the frame of Act no. 586/1992 Coll. \*, on Income Taxes, as amended (hereinafter “AIT”) there has been a concept of “binding ruling over the way of pricing used in related parties transactions” (hereinafter only as “binding ruling”) implemented in the AIT with the effect as of January 1, 2006 which means the implementation of so called Advance Pricing Agreements (or Advance Pricing Arrangements) into the Czech tax law.

Provisions of section 38nc of AIT determine the application of the binding rulings in cases of so called transfer prices (refer also to OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations – hereinafter only as “OECD Guidelines”) and in respect of procedures they extend the provisions of section 132 and section 133 of Act no. 280/2009 Coll., on Administration of Taxes, as amended (hereinafter just AAT) regulating issuance of binding rulings in general. The binding ruling takes over principles of advance pricing agreements in the sense of OECD Guidelines (paragraphs 4.124 - 4.166) and other international standards (hereinafter only as “APA” – Advance Pricing Agreement), and adjusts them to the conditions of the Czech tax law. The binding ruling provides the taxpayers with the possibility to verify in advance whether the way of pricing between related parties (associated companies) is complying with the arm’s length principle for the purposes of tax base definition as provided for in Article 9 – Associated Companies - of the Double Taxation Treaties, as well as in section 23 par. 7 of AIT.

Upon a request by a taxpayer, a tax administrator shall decide whether the taxpayer selected the way of pricing leading to appropriate allocation of incomes and expenditures between related or associated parties. Such ruling shall mean a certain degree of certainty for the taxpayer in respect of the way, how the tax administrator assesses the prices set-up by the taxpayers for the purposes of tax base definition. If in the period, for which the binding ruling was issued, the taxpayer meets all the conditions, based on which the tax administrator took the decision, and if the facts and circumstances effecting the way of pricing do not change in principle, the tax administrator shall consider the prices determined in this way as a usual price under section 23 par. 7 of AIT in the frame of a tax audit or other tax proceedings.

When applying provisions of section 38nc of AIT, the tax administrator shall follow especially the procedures recommended by the OECD Guidelines, and shall also take into consideration the results of discussions in EU working bodies concerning APA, namely those of EU Joint Transfer Pricing Forum (hereinafter JTPF).

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\* Coll. means Collection of Laws of the Czech Republic.

## **I. PROCEDURE TO BE FOLLOWED WHEN ISSUING A BINDING RULING**

### **1. For what kind of relations**

#### 1.1. Related persons

The Procedure under section § 38nc of AIT in reference to section 132 and section 133 of AAT shall be used in cases when the taxpayer effects prices in trading relations with persons related to him (hereinafter just as “taxpayer”) in the sense of section 23 par. 7 of AIT.

#### 1.2. Period

In order to increase its legal certainty, the taxpayer may apply for the assessment of the transfer pricing he proposes, namely for the cases which are being brought into effect in the current taxable period or will be brought into effect in future. It is impossible to apply for the binding ruling concerning the business relations that have already influenced the level of tax liability (tax base or tax loss) for the taxable period, which already was subject to the obligation to file a tax return.

If the taxpayer applied the same transfer pricing already in the past, in case of the positive ruling he may suppose, that despite the lack of valid binding ruling applicable on the previous periods, the tax administrator will apply the same procedure as the one applied in the binding ruling when assessing the transfer pricing during the tax control covering the years concerned, and if the terms are equal, he will come to the same deliberations.

#### 1.3. Number of transactions

The application is usually submitted in respect of one transaction. If there are several transactions closely related (several transactions between the same entities concerning the same business, combined transactions), it is more appropriate to assess the business relation as a whole.

On the other hand, if the taxpayer applies for the ruling in respect of a set of transactions which are not closely related to each other and the tax administrator does not agree with the pricing in respect of any of the transactions, the negative ruling shall apply to the application filed, i.e. to all transactions stated there.

The requirement concerning the number of transactions in the application cannot be generalized. It is always necessary to assess each case individually.

### **2. Who submits the application**

The application may be submitted by the taxpayer, to whom the binding ruling shall apply, i.e. taxpayer, who stipulates the price mentioned above.

If a legal entity, not established yet, is engaged in the assessed transaction, the application may be filed by another entity/person, e.g. the legal entity founder or his representative pursuant to AAT. There is the condition that the legal entity being established must be identified sufficiently, i.e. its name, legal form, registered office, place of business, position in the group’s organisational structure, and business activity description must be stated.

### **3. Where the application should be submitted**

The application for the binding ruling shall be submitted by the taxpayer to his local tax administrator, i.e. to his local Tax Office. When filing the application on behalf of the legal entity the establishment of which is being planned, the application shall be submitted to the tax administrator who should a competent authority for the legal entity after its establishment.

### **4. Procedure exercised by the tax administration when assessing the pricing use**

The tax authority assessing the way of transfer pricing assumes, that the data stated by the taxpayer are full and right. The tax administrator is not obliged to verify all the financial indicators, actual level of costs and revenues, actual volume of performance, product or service parameters etc., or to determine possible substitute method. The tax administrator shall check comparable circumstances and/or call upon the taxpayer to provide explanation of the facts stated in the application (under section 89 par. 1 of AAT) and shall assess whether the pricing proposed by the taxpayer is complying with the arm's length principle.

When issuing the binding ruling, the tax administrator shall proceed from the pricing selected by the taxpayer. If the taxpayer provides sufficient reasoning for his selection of the particular way of pricing, the tax administrator shall consider that way of pricing as the appropriate one for the issuance of the binding ruling.

When assessing the application, the tax administrator uses the procedures for verification of usual prices (transfer prices) in case of the tax base and tax assessment correctness examination (refer also to the Ministry of Finance Guidance D-332 – Communication by the Ministry of Finance in respect of international standards application in taxation of transactions between associated companies – transfer pricing, ref. no. 39/86 829/2009-393 available at the Czech Tax Administration website: [www.danovaspravacr.cz](http://www.danovaspravacr.cz) ).

The tax administrator is entitled to review all information necessary for the verification of the pricing appropriateness, namely using the procedures provided for in AAT, eventually through international cooperation (Act no. 253/2000 Coll., on International Assistance in Tax Administration, article Exchange of Information in the frame of Double Taxation Treaties).

### **5. Issuance of ruling**

The respective tax administrator takes the decision in respect of the application for binding ruling (section 38nc par. 3 AIT).

The tax administration is not bound by the law to issue the ruling in a particular term. Nevertheless, the tax administrator shall issue the ruling without undue delay as it is not acceptable at administration of taxes to prolong the term for issuance of decision only due to its own passivity. The term may be prolonged due to the procedures to be undertaken by the tax administrator in order to find out the conditions for the issuance of the ruling.

Beyond the principle requirements of the ruling under section 102 of AAT, the ruling issued must also contain the requirements under section 132 of AAT.

### **6. Ruling Effect**

Under section 133 par. 1 of AAT, when determining the tax liability the ruling is effective in relation to the tax administrator assessing the tax liability of the taxpayer upon whose application and in respect of whom the ruling has been issued. The ruling is effective only if it was issued on the grounds of data identical with the actual status of the matter in the period when the decision on the tax liability is taken.

The binding ruling comes into effect for the taxable periods stated in the ruling. It may not be applied for the assessment of tax consequences of the crucial facts having place in the taxable period starting after the period of 3 years from the date when the ruling came into legal effect; unless the tax administrator determines the shorter period.

Parties involved (i.e. other parties engaged in the assessed business relation) as well as the other tax administrators concerned are to be notified of the ruling.

If the parties involved are the entities stipulated in section 2 par. 3 and section 17 par. 4 of AIT, which are not tax liable for the incomes arising from resources on the territory of the Czech Republic, and if the parties are residents of a state, which entered into the Double Taxation Treaty with the Czech Republic, and if the Treaty allows the international exchange of information about taxable entities, then the ruling is notified to the relevant tax office of the contracting state as so called spontaneous exchange of information, namely in the usual form defined for the tax information exchange. The mentioned procedure shall not be applied, if there has been a process of bilateral APA already initiated based on article 25 of the Double Taxation Treaty.

If after the issue of the binding ruling (in the period of its effect), and following the procedures provided for in AAT, the tax administrator finds out (even in international context) that the conditions stated by the taxpayer in the application do not correspond to the facts (i.e. the facts stated were incorrect, incomplete or untruthful) and the binding ruling was issued based on these conditions, such ruling is not applicable pursuant to section 133 par. 5 of AAT.

## II. WHAT MUST THE APPLICATION CONTAIN

The taxpayer shall present the application for the issuance of binding ruling in an **official language** under section 76 of AAT.

The application must contain the data listed in section 38nc par. 2 of AIT. When filing relevant **documentation** (especially under letter *f*) of the quoted provision), the taxpayer must demonstrate all the facts affecting the way of pricing being assessed.

In respect of the scope of relevant documentation, the Ministry of Finance has issued the communication in the form of the guidance (D-334, Communication by the Ministry of Finance in respect of the scope of transfer pricing documentation, ref. no. 39/86 849/2009-393 available at the Czech Tax Administration website: [www.danovaspravacr.cz](http://www.danovaspravacr.cz) ).

In the application for binding ruling, the taxpayer shall document the facts, which could have significant influence on the assessed pricing. That could be information concerning the group, company, business relation or other circumstances affecting the business relation, way of determining the transfer price etc.

## III. OTHER PROVISIONS

### 1. Administrative charges

Under the Annex to Act no. 634/2004 Coll., on Administrative Charges, as amended (hereinafter AAC), Table of Charges, part I, item 1 (1) (v), the applicant is obliged to pay the administrative charge in amount of CZK 10 000, while submitting the application to the local competent tax administrator. The charge relates to the application filed regardless the number of the transactions assessed.

## **2. Appeal**

Under section 132 par. 3 of AAT, an appeal against the binding ruling is not admissible.

This Guidance repeals the Guidance D-292 issued under the ref. no.: 39/116 680/2005-393, including the amendment to the Guidance D-292 issued under the ref. no.: 39/105 193/2007-393, and comes into effect on January 1<sup>st</sup>, 2011.

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