Czech Republic
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National Reporter
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1. General introduction

1.1. Background

Advance rulings play an important role in the current tax practice. The following items detail some of the reasons for the increased importance of advance rulings:

- a growing complexity of legislation, combined with rapidly developing and changing tax laws and an increased sophistication in application of tax legislation;
- an increased tendency by the financial authorities[1] to apply "substance over form" doctrines;
- a growing complexity of business operations and the active promotion by governments to attract the establishment of new business activities by offering to secure favourable tax treatment;
- a transaction between the related parties (the definition of "related party" encompasses, e.g. blood relatives, a company and its controlling shareholders).

The taxpayer's main advantage is his legal certainty before the transaction is undertaken; the legal certainty should eliminate the tax risk. The advance ruling also brings advantages for the financial authorities through improving the relationship with the taxpayer and/or by facilitating the assessment process.

Unfortunately, the current wording of the Czech tax law does not provide individual officials (i.e. employees of the financial authorities) and taxpayers (i.e. individuals or legal entities) with many provisions which enable the above mentioned advantages to be utilised.

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1 Generally, the financial authorities carry out administration of taxes, charges and levies in the Czech Republic. Financial authorities consist of two levels: local financial authorities and the Ministry of Finance. Local financial authorities consist of the local financial offices (1st level) and the superior financial headquarters (2nd level). The law determines competence of these local financial authorities. The Ministry of Finance is superior to financial headquarters and, in certain cases, can take actions which normally belong to the competence of the local financial offices and financial headquarters. The Ministry of Finance can take a measure to eliminate hardship and discrepancies of the law (based on Income Taxes Act No. 586/1992 Coll., as amended).

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1.2. Definition

The understanding of the term "advance ruling" may differ according to country. Specific treatment, which includes particular categories, exists in nearly every country world-wide. The Czech Republic is no exception.

Therefore, for the purpose of this report, I shall define the advance ruling as "a more or less binding statement from the financial authorities upon the voluntary request of a private person, concerning the treatment and consequences of one or a series of contemplated future actions or transactions".

The advance ruling as defined above does not include:

- compromises on past transactions that do not contain an agreement as to the future;
- so-called public rulings (as defined in *The International Guide to Advance Rulings* issued by the International Bureau of Fiscal Documentation);
- permission for special tax treatment which is only available upon application and to which the taxpayer who meets certain conditions is entitled via statute (see section 3, the formal ruling describing advance tax agreements).

However, with respect to our country's unique situation, this report also considers some of the Ministry of Finance's instructions as rulings ("D" measure by the Ministry of Finance), even though they are not issued upon request. I believe that a short description of this instruction currently used by the Ministry of Finance and often applied by taxpayers would facilitate a better understanding of the unique ruling system in the Czech Republic.

1.3. Categorisation

For the purpose of this report, I have classified the advance rulings in the following groups:

- formal ruling;
- informal ruling;
- international ruling.

A formal ruling is a ruling issued or an agreement with the financial authorities based on specific statutory or regulatory authority. The procedure for obtaining such a ruling, the subject it may cover and its potential form are more or less prescribed by the law. Based on the wider perspective of this category's definition, the formal ruling is represented by advance tax agreements.

An informal ruling is an agreement with the financial authorities or a statement issued by the financial authorities not based on a specific statutory or regulatory authority. This ruling exists as a matter of practice rather than statute. The informal ruling is represented by the Official Positions of the Ministry of Finance.

An international ruling involving the tax authorities of more than one country (e.g. advance pricing agreement) does not currently exist in the Czech Republic.

The paragraphs below explain the above mentioned rulings in more detail.

2. General description

The current tax legislation in the Czech Republic was enacted on 1 January 1993 through significant tax reform. The tax legislation has rapidly evolved, however it is not perfect. Still, the Czech ruling system is not highly developed at the moment (there is only one more or less formal ruling in the Czech Republic).

The sentences and terms used in the new tax law have not always been clear and accurate. Therefore, different applications and interpretations of the law between taxpayers and the financial authorities have existed. In order to unify the law's application and in order to increase the taxpayer's legal certainty, the unique ruling system arose.

From a wide perspective, the current Czech ruling system consists of the following instruments:

- advance tax agreements with the local financial authorities;
- Official Positions of the Ministry of Finance issued upon request;
- Ministry of Finance "D" measures;

Where advance tax agreements might be classified as formal rulings, Official Positions and "D" measures of the Ministry of Finance might be classified as informal rulings. However, the border between a formal and an informal ruling is not always clear and well-defined.

Currently, "D" measures and Official Positions are the financial authorities' most frequent and important instruments which impact the taxpayer.

"D" measures are not issued upon request. Therefore, I have not included them in advance rulings for the purpose of this report.

Please note that the legally binding general measures of the Ministry of Finance (Decrees of the Ministry of Finance) which would clarify or describe in detail the law's provisions are not often used in the Czech Republic.

3. Formal rulings

3.1. Introduction

Formal rulings are represented by the advance tax agreements which were enacted by the tax reform effective 1 January 1993. The advance tax agreement is an agreement concluded between a taxpayer and the financial authorities regarding the tax and tax base.

3.2. Procedural issues

3.2.1. Sources

The main sources for the advance tax agreements are statutory provisions; a minor source is administrative practice.

The legal sources for the advance tax agreements can be found in article 31 paragraph 7 of the Act on Administration Taxes and Levies, No. 337/1992 Coll., as amended (hereinafter "Taxes Administration Act").

The Taxes Administration Act stipulates that the tax administrator may agree on the tax and the tax base with the taxpayer if the taxpayer did not correctly confirm the data relating to his tax base and the amount of tax under the procedure described in this Act, and if the tax base and the amount of tax cannot be reliably determined by using materials and information which are at the tax administrator's disposal.

Based on the above mentioned, the advance tax agreements are used for determining the relevant tax liability.

Generally, all taxpayers are qualified to negotiate an advance tax agreement with a local financial authority. A taxpayer may either act by himself or through a representative. No mandatory representative is required. In practice, only Czech tax non-residents negotiate the special taxation method (see below, section 3.3).

Advance tax agreements are reached through negotiations between a taxpayer and the appropriate local financial authority. Such an agreement must be recorded by the local financial authority in a written protocol that describes in detail the course of the verbal negotiations and the facts on which the negotiations were based. The protocol is a public document, i.e. the information mentioned in the protocol is deemed to be correct unless proven otherwise. The final agreement of the parties described in the protocol is then confirmed by the local financial authority's formal decision. This decision is subject to administrative law.

The advance tax agreement does not concern other countries.

3.2.2. Competent authority

The competent local financial authority is authorised to conclude an agreement with the taxpayer. There is no specific organisation among the financial authorities which deals with agreements.

Generally, the local competence of a local financial authority is determined in the case of a legal entity by the location of its registered office in the Czech Republic, in the case of an individual by his place of residence (permanent address) in the Czech Republic, or otherwise according to the place where an individual usually stays, i.e. where he/she spends most days of the year. If the local competence cannot be established under the above mentioned, it shall be determined according to the location of the particular permanent establishment in the Czech Republic or the place in which a taxpayer carries out his main activity in the Czech Republic.

The list of Financial Offices and Financial Headquarters has been issued by the Ministry of Finance under No. 233/21 650/1994 and has been published in *Financni zpravodaj*[2] No. 5/1994. This list is applicable as of the present.

2 *Financní zpravodaj* is an official periodical issued by the Ministry of Finance in which its measures and positions are published.

3.2.3. Time limits

Neither the request requirement nor the request period for the advance tax agreement is given by the law.

In the case that the tax proceedings are started by the local financial authority, the taxpayer receives a request (notification) from the local financial authority to conclude the advance tax agreement. A time limit not usually less than eight days is stipulated in such a request.

3.2.4. Format and content

No special requirements are stipulated for commencing the Advance Tax Agreement. Thus, the general requirements for the taxpayer to commence the tax proceedings must be observed.

The authorised form is used only in cases stipulated by the law. Other submissions than these in which an authorised form is stipulated concerning tax matters, such as notifications, applications, proposals, objections and appeals, may be made either in writing or verbally in a protocol, or through transmission technology (telex, fax, etc.). A submission made by cable or transmission technology must be repeated in writing or orally in a Protocol within three days of the submission's dispatch. This period cannot be extended, and the restoration of the previous condition is not permitted.

The submission's content is decisive for the proceedings, even if the submission is headed incorrectly. The submission must clarify who has filed it, its subject matter and its proposal. Only one copy of the submission is required.

Tax proceedings before the financial authorities are conducted in the Czech language, with an exception for proceedings with Czech national minorities or ethnic minorities. All written submissions must be presented in Czech, and any submitted written documentation must have an official translation appended to it (in practice, unofficial translations are accepted by the financial authorities as well), as needed. In verbal proceedings the tax administrator may admit an interpreter whose name is on the register of interpreters, provided that such an interpreter is hired by the person liable to tax at his own expense.

No additional information is required to be submitted for commencing the negotiations leading to an advance tax agreement. During negotiations the taxpayer should describe as clearly and as detailed as possible his business operations and transactions. Copies of contracts or other documents do not have to be submitted unless it is required by the financial authorities (they might be helpful in order to explain details of the business operations). On the basis of the factual negotiations described in detail in the protocol, the special tax base shall be agreed to and the decision of the local financial authority shall be issued.

3.2.5. Processing, period of validity, fees, disclosure

As already stated in the previous paragraphs, the key point of the advance tax agreement is the verbal negotiation whose content is summarised in a protocol. A

tax subject's situation is clarified during the verbal negotiation. The financial authorities do not usually require any additional documents to be provided, although they may on occasion.

The protocol must clarify who conducted the tax proceedings, where and when they occurred, and who took part in them. It should include a description of the main subject matter of the proceedings, a coherent description of what took place during the proceedings, either a list of documents and other papers submitted during the proceedings or an abstract of the contents of the documents presented for examination, and an account of the advice given, views expressed by the instructed persons, proposals or objections, etc. The protocol also includes agreements reached in the course of the verbal proceedings and advanced decisions announced during them.

Once the protocol on the advance tax agreement has been signed, the local financial authority issues its decision on the same topic (see below, section 3.4). The local financial authority has no time limit in which to issue the decision. In practice, the entire procedure should not take longer than four weeks.

The decision based on the protocol on the advance tax agreement is usually issued for an indefinite period of time or for a period of one or two years, depending on each local financial authority's practice. Generally, such a decision may not be issued for a period shorter than one year. Therefore, the decision also concerns actions or transactions in the future.

The local financial authorities impose no fees for the advance tax agreement on the taxpayer. However, a translator's, notary's or tax advisor's fee could be attached to this procedure.

Other procedural questions are governed by the Taxes Administration Act.

3.2.6. Appeals

Appeals are classified as ordinary remedial instruments. The basis of appeal is provided by the Taxes Administration Act. No specific appeal exists against the advance tax agreement.

It is a generally accepted principle that the right of appeal is, under certain conditions, only available against a decision in tax proceedings. Thus, if the financial authority fails to issue a decision on a special taxation method (or commence the verbal proceedings), the tax law grants no effective measures on how to constrain the financial authority for issuing its decision.

An appeal shall be submitted in writing or made orally in a Protocol at the local financial authority whose decision is being contested by the appeal. An appeal must include certain particulars stipulated by the Taxes Administration Act.

An appeal may be submitted within 30 days after the contested decision is delivered.

An appeal against the decision on a special tax and tax base does not have a suspensory effect.

The law stipulates no time limit by which the financial authorities must hear an appeal. Further, there are no limits stipulated for decision making, with the

exception of certain ones for procedures started by the financial authorities in the case of an incorrect tax return. It is our experience that appeal procedures can take from two weeks to one or more years.

In addition to the appeal, a decision's recipient may also use general extraordinary remedial instruments which are described in the Taxes Administration Act.

3.3. The subject matter of formal ruling

The legal regulations stipulate no particular qualifying issue in which a taxpayer must ask for an advance tax agreement. There only exists a general provision which allows agreement on the tax base and tax in all cases in which the tax base and tax may not have been proved (e.g. tax may not be stipulated by the account books), and the tax may not be determined by using the information available to the tax administrator. This means that the advance tax agreement may be concluded through the most significant tax laws (e.g. personal and corporate, value added and transfer taxes).

In practice, the advance tax agreement is often used for negotiating a special taxation method for the permanent establishments of a Czech tax non-resident. The advance tax agreement may also be used, for example, for determining a base for payroll withholding in the case of "international hiring out of labour".

3.3.1. The negotiation of the special taxation method

The Income Taxes Act stipulates that a permanent establishment[3] of a taxpayer whose registered office or residence is abroad (Czech tax non-resident) may not have a lower tax base than the tax base which would be assessed from the same or similar activity by a taxpayer whose registered office or residence is in the Czech Republic. In order to determine such a tax base, the ratio of profits to total expenses or to gross income achieved by comparable taxpayers or activities, comparable trade margins (commissions) and other comparable data may be

3 A permanent establishment is defined in art. 22 para. 2 of the Income Taxes Act as follows: "For the purpose of this Act, a permanent establishment shall mean a facility located in the Czech Republic, e.g. a workshop, office, mine for the extraction of natural resources, a place of sale, a building (construction) site, where taxpayers defined in articles 2 para. 3 and 17 para. 4 carry on their activities in this country. A building (construction) site, building (construction) assembly project site and further places (sites) where activities and services are rendered under para. 1 (c) of this article by a taxpayer, or by employees of the taxpayer, or persons working for such taxpayer, shall also be regarded as a permanent establishment, provided that their duration exceeds 6 months (regardless of the tax period) within any twelve successive calendar months." Generally, art. 2 para. 3 and art. 17 para. 4 define taxpayers whose registered office or residence is abroad (Czech tax non-residents). Art. 22 para. 1 (c) contains the following services: "... services, with the exception of construction assembly projects, including commercial, technical or other consultancy services, management or intermediary services and similar kinds of services provided in the Czech Republic".

used. The method of apportioning the total profit or loss attained by the founder of a permanent establishment to a particular branch can be used as well.[4]

The advance tax agreements are not published.

3.4. The binding force of formal rulings

A mutual agreement between the taxpayer and the local financial authority regarding a special tax base and tax reached during tax proceedings is, according to the law, recorded in a protocol. The protocol is a public document, i.e. the information mentioned in the protocol is deemed to be correct unless proven otherwise. The protocol is one source of evidence used in tax proceedings.

The Taxes Administration Act stipulates that tax liabilities in tax proceedings may be imposed or rights accorded only through a decision. Based on this fact, the liabilities agreed in the protocol are then imposed on the taxpayer through the decision of the local financial authority. The conditions for its issuance are given by the Taxes Administration Act. As a result, the decision of the local financial authority on a special taxation method is a particular administrative act issued on the basis of the law. Thus, if the decision meets requirements given by the Taxes Administration Act, it is to be binding for both its addressees and all the financial authorities. However, using the extraordinary remedial instruments, the financial authorities must *ex officio*, or on the request of the taxpayer, repeal, replace by another decision or amend the decision if it conflicts with the rules of law, or if it is based on substantial errors in tax proceedings and circumstances which suggest that the tax has been wrongly assessed.

Generally, decisions issued in tax proceedings must be in writing, and they are legally binding for the addressees only when such decisions are duly delivered or communicated to them. A taxpayer may not be bound by a decision given to another taxpayer.

4 Currently, the following methods of special taxation are primarily used by the local financial authorities for permanent establishments (if the profit/loss method of taxation is not applicable):

- expense method – a tax base is determined equal to between 5 per cent to 10 per cent of all expenses allocated to the branch. The tax base will then be taxed at the applicable corporate tax rate, currently 35 per cent;
- sales method – if sales were made through the branch, the tax base would most likely be determined as being 1.1 per cent to 5 per cent of the turnover incurred through the branch;
- employee method – the actual tax payable is calculated as an amount per employee multiplied by the number of employees working for the branch. We have practice with negotiating CZK 40,000.00 (app. USD 700.00) per employee. However, it is likely that in a year's time this method will no longer be accepted by the financial authorities;
- secondment method – a tax base of app. 1.2 per cent of charges under a Management Service Agreement (MSA) may be determined. (In a case in which expatriates employed by a foreign entity without any presence in the Czech Republic are seconded by the foreign entity to provide services in the Czech Republic (i.e. a branch or a Czech company) under a MSA. The financial authorities consider this situation as the provision of management consultancy or business or similar services in the Czech Republic by employees of the foreign entity which leads to the creation of a permanent establishment of the foreign entity in the Czech Republic.)

The decision does not have precedential value. The taxpayer may not rely on the fact that the decision on the advance tax agreement has been issued under similar circumstances to another taxpayer; but, in practice, it is likely that the taxpayer will receive the same decision.

The change in legislation may affect the validity of the existing ruling starting with the day when the change comes into force. A change in jurisprudence does not affect the validity of the existing ruling.

3.5. Evaluation and recommendation

Article 31 paragraph 7 of the Taxes Administration Act allows agreement on the tax base and tax in all cases in which the tax base and the tax may not have been proven by the taxpayer, and the tax cannot be determined by using the information available to the tax administrator. However, the practice has not witnessed a lot of cases in which this provision has been applied. Furthermore, this provision more or less concerns past activities.

Based on these facts, it is necessary to amend the Czech tax law with a provision which allows the financial authorities to issue, upon the voluntary request of a taxpayer, the advance ruling regarding the treatment of future actions and transactions.

4. Informal rulings

4.1. Introduction

Informal rulings are represented by the Official Positions of the Ministry of Finance, and these statements are issued upon a taxpayer's or his representative's request. Generally, I can differentiate between the addressed Official Positions (this Official Position is issued for the certain situation of the particular taxpayer) and no name Official Positions (this Official Position is issued for the certain situation of an unknown taxpayer). Official Positions have been used from the very beginning of the new tax system enacted by the tax reform effective 1 January 1993.

"D" measures of the Ministry of Finance, even if they are not classified as rulings for the purpose of this report, became the most important measures of the financial authorities during the operation of the new tax system. "D" rulings significantly help both the private person and the tax administrator to clarify the ambiguous part of the tax legislation and to reach a compromise.

4.2. Procedural issues

The Official Positions are unilateral positions of the Ministry of Finance issued upon request.

The Official Positions are not based on any stipulated statutory provisions in a legal act, and no legal procedure exists regarding their implementation. The source for Official Positions is administrative practice rather than statutory provisions.

There is no central policy under which such rulings are issued; the issuance of the Official Position is left to the discretion of the individual official at the Ministry of Finance. Any taxpayer may request the Official Position either himself or through his representative. However, no mandatory representative is required.

A request for the Official Position must be sent to the Ministry of Finance at the following address:

Ministerstvo financí České Republiky,
Letenská 15,
110 00 Praha 1.

There is no specific authority given to the Ministry of Finance. Instead, the authority of the Ministry of Finance is based on a relationship of superiority and inferiority; therefore, the subordinated financial authorities will not challenge the position of the Ministry. There is no specific organisation among the financial authorities in the Czech Republic that deals exclusively with Official Positions.

The Ministry of Finance is not obliged to issue the Official Position, and there is no time limit within which the Ministry must respond. There are no fees connected with the request for or the issuance of the ruling.

Official Positions of the Ministry of Finance are sometimes published in tax journals. These Official Positions are abstract in nature and do not infringe upon the tax subject's right to privacy.

Official Positions do not concern other countries. However, the financial authorities are authorised to consult their counterparts in the respective other country.

No appeal can be lodged against an unfavourable ruling; no remedies can be applied.

4.3. The subject matter of informal rulings

Official Positions are possible in all areas of tax law.

There is no legal qualifying issue in the Czech Republic by which the taxpayer must or may ask the Ministry of Finance for an Official Position. Therefore, an Official Position may cover questions of facts (e.g. whether a price is within the arm's length range), questions of interpretation or questions of applying the law to a specific set of facts. In practice, questions of applying the law to a specific set of facts is used most often (Official Positions express the Ministry's official opinion as to how a tax subject will be taxed or treated under a certain set of facts). Questions of facts are seldom used.

4.4. The binding force of informal rulings

From a wide perspective, Official Positions represent administrative acts. To be binding in the Czech Republic, an administrative act must meet certain legal criteria.

If Official Positions do not meet the requirements mentioned above, they may not be considered binding for the taxpayer. As Official Positions are not internal administrative directives, they may not be binding for local financial authorities as well. Furthermore, Official Positions may not be considered as official interpretations of the law because no authorisation to do so has been granted to the Ministry of Finance by the legally binding regulation. Official Positions have no precedential value.

Thus, Official Positions are used for expressing how the taxpayer should be taxed or treated under a certain set of facts. Again, such an expression is not legally binding for anyone; it only contains informative significance for the taxpayer and the financial authorities. Only should a certain issue proceed into the Ministry's decisive competence would the Ministry likely decide in compliance with the position expressed in the Official Position.

It is common practice, based on the fact that the Ministry of Finance governs Financial Headquarters, who in turn then govern the Financial Offices (in compliance with the Act on Local Financial Authorities, No. 531/1990 Coll., as amended), that the financial authorities respect and observe the Official Positions as binding opinions, provided that they do not conflict with a tax act or other legally binding regulation. The local Financial Offices even respect the Official Position issued for a different taxpayer than a taxpayer who utilises benefits arising from the Official Position in a comparable situation. But, another taxpayer may not rely on that respect of the local Financial Office; instead, the Official Position issued for a different taxpayer may be used in tax proceedings as evidence for the correct tax treatment of a transaction.

4.5. A unique administrative measure – "D" measure

The most frequent and important administrative measure concerning the ambiguous and incomplete parts of tax legislation is the "D" measure. Below, please find the characteristics of this instrument.

"D" measures are instructions of the Ministry of Finance which are not issued upon request.

"D" measures are not based on any stipulated statutory provisions in a legal act, nor do any legal procedures exist. The source for "D" measures is administrative practice rather than statutory provisions. "D" measures may not be considered legal regulations. A "D" measure should only be treated as a notification as to how the Ministry of Finance understands a certain legal regulation, or as an expression of the Ministry's legal opinion.

As aforementioned, Ministry of Finance "D" measures, as technical commentaries on specific tax issues, are very often applied by the Ministry to express its opinion. "D" measures are used in all material tax laws, especially in the areas of income tax law (both corporate and individual) and Value Added Tax law. "D" measures are also used in excise duty laws, road tax and real estate tax. No "D" measure has yet been issued in the area of the gift, inheritance and real estate transfer tax law. "D" measures are also often used in the area of procedural tax

law, especially to stipulate the procedure of how certain benefits provided by material tax laws may be utilised by a tax subject.

In respect to the fact that “D” measures are not based on law, there are no prohibited areas for “D” measures in the Czech Republic.

“D” measures are always issued as rulings with a widespread effect, i.e. taxpayers concerned may utilise benefits arising from them and, on the other hand, taxpayers concerned should observe the liabilities therein implied (see below regarding “D” measures’ binding effect).

Ministry of Finance “D” measures are not legal regulations and thus they are not binding for the taxpayer, even if they are published in *Financní zpravodaj*. ”D” measures are not binding even for Financial Offices or Financial Headquarters (a “D” measure is not an “internal” directive under which the inferior body would have to operate).

Thus, “D” measures should only be treated as a notification of how the Ministry of Finance understands certain legal regulations, or as an expression of the Ministry’s legal opinion. Such an expression is not legally binding for anyone; it has only informative significance for the taxpayer and the local financial authorities.

Furthermore, “D” measures may not be considered as official interpretations of the law because no authorisation to do so has been granted to the Ministry of Finance by a legally binding regulation.

“D” measures may not impose new liabilities that are not presumed by tax acts to the taxpayers. “D” measures may neither correct situations that were not solved by tax acts, nor may they conflict with tax acts. If a “D” measure does so conflict, it has only informative significance. “D” measures have no precedential value.

It is common practice that the Ministry of Finance will replace a currently valid “D” ruling by a new one through either a change in legislation or a change in administrative interpretation. Such a substitution is not performed retroactively.

We can also meet the following opinions in the Czech tax practice. As the Ministry of Finance governs financial headquarters, who in turn then govern the financial offices (in compliance with the Act on Local Financial Authorities, No. 531/1990 Coll., as amended), it is maintained in practice that local financial authorities may not act against the taxpayer who complies with the relevant “D” ruling, provided that the “D” ruling is not in conflict with a tax act or another legally binding regulation. However, some of the local financial authorities may not perceive these “D” rulings to be legally binding interpretations and ignore them in favour of their own interpretation of tax acts.

It is my experience, and the general tendency of the local financial authorities, to operate according to the “D” ruling. On the basis of this fact, “D” rulings have huge actual significance. Accordingly, the taxpayer should comply with the “D” ruling published in *Financní zpravodaj*, unless he is certain that he is able to claim his right through court proceedings in the particular case.

5. International rulings

There is currently no legislation or practice regarding international rulings in the Czech Republic.

However, the Ministry of Finance is now discussing a proposal for a decree regarding the determination of the income tax base in the case of international transactions between a group of companies. Based on this decree, a taxpayer will be able to ask the relevant local financial authority to assist in concluding a transfer price agreement between a group of companies for a fixed period. In other words, the local financial authority will issue its approval on the transfer price in advance, thus increasing the legal certainty of the taxpayers concerned.

I would not attempt to say when this decree would be passed and come into force.

Résumé

La législation fiscale en vigueur de la République tchèque a été édictée le 1er janvier 1993 à la suite d’une importante réforme. Cette législation a évolué rapidement, mais elle n’est pas parfaite. Le système tchèque des agréments n’est pas encore très développé à l’heure actuelle.

Dans son ensemble, le système tchèque des agréments comporte actuellement les instruments suivants:

- les agréments préalables conclus avec les autorités financières locales;
- les avis officiels du ministère des Finances communiqués sur demande;
- les mesures “D” du ministère des Finances.

Aux fins du présent rapport, lès agréments préalables sont classés dans la catégorie des agréments formels, tandis que les avis officiels du ministère des Finances et les mesures “D” constituent des agréments informels.

L’agrément préalable est un accord conclu entre un contribuable et l’autorité fiscale sur l’assiette de l’impôt et l’obligation fiscale. La source légale est l’article 31, paragraphe 7, de la loi sur l’administration des impôts et taxes, No. 337/1992 Coll., telle que modifiée (ci-après “loi sur l’administration des impôts”). D’une manière générale, tous les contribuables ont qualité pour négocier un agrément préalable avec une autorité fiscale locale, et l’agrément préalable peut être conclu dans tous les domaines de la législation fiscale. Dans la pratique, l’agrément préalable est utilisé la plupart du temps dans le champ d’application de la législation sur l’impôt sur le revenu et, en général, pour la négociation d’une méthode d’imposition spéciale par les Tchèques qui sont des non-résidents fiscaux.

L’avis officiel est une déclaration du ministère des Finances formulée à la demande d’un contribuable ou de son représentant. L’avis officiel n’est fondé sur aucune disposition réglementaire prévue dans une loi quelconque, et aucune procédure légale ne régit l’utilisation de l’avis officiel. Il n’existe pas de directives générales concernant la conclusion de ces agréments, étant donné que l’émission de l’avis officiel est laissée à l’appréciation du fonctionnaire du ministère des Finances compétent. Tout contribuable peut demander un avis officiel et un avis officiel peut être formulé dans tous les domaines de la législation fiscale. L’avis officiel ne lie ni le contribuable, ni l’autorité fiscale. D’une manière générale, on peut distinguer entre les avis officiels personnalisés (un tel avis est émis pour répondre à la situation

du contribuable particulier) et les avis officiels anonymes (émis pour répondre à la situation d'un contribuable inconnu).

A côté des agréments qui viennent d'être décrits, il existe en République tchèque une mesure administrative très importante qu'il convient de mentionner afin de mieux comprendre le système de l'agrément. C'est la mesure dite mesure "D", qui concerne les parties ambiguës et obscures de la législation fiscale. Les mesures "D" du ministère des Finances ne sont pas prises sur demande; aussi, ne sont-elles pas considérées comme un agrément préalable aux fins du présent rapport. Une mesure "D" n'est pas fondée sur une disposition réglementaire quelconque d'une loi, et aucune procédure légale ne régit l'utilisation de la mesure "D". De plus, une mesure "D" ne peut être considérée comme une réglementation légale. Cette disposition doit être simplement traitée comme une notification de la manière dont le ministère des Finances interprète une réglementation légale déterminée, ou comme l'expression de l'avis juridique du ministère des Finances.

Il n'existe actuellement aucune législation ou pratique concernant les agréments internationaux en République tchèque.

Zusammenfassung

Die derzeitige Steuergesetzgebung der Tschechischen Republik wurde am 1. Januar 1993 durch eine umfangreiche Steuerreform in Kraft gesetzt. Das Steuerrecht hat sich rasch entwickelt, ist jedoch noch nicht perfekt. Jedenfalls ist das tschechische Steuerauskunftssystem gegenwärtig nicht besonders entwickelt.

Aus breitem Blickwinkel gesehen umfasst das gegenwärtige tschechische Auskunftssystem folgende Möglichkeiten:

- steuerliche Vorvereinbarung mit dem zuständigen örtlichen Finanzamt;
- amtliche Stellungnahme des Finanzministeriums, die auf Antrag erfolgt;
- "D"-Massnahme des Finanzministeriums.

Für die Zwecke dieses Berichts werden die steuerliche Vorvereinbarung als verbindliche Formalauskunft, die amtliche Stellungnahme des Finanzministeriums und die "D"-Massnahme als informelle Auskünfte betrachtet.

Die steuerliche Vorvereinbarung wird zwischen dem Steuerpflichtigen und dem Finanzamt über die steuerliche Bemessungsgrundlage und die entsprechende Steuerpflicht getroffen. Rechtsgrundlage ist Artikel 31 Absatz 7 der Neufassung des Gesetzes über die Verwaltung der Steuern und Abgaben Nr. 337/1992 Coll (nachstehend als "Steuergesetz" bezeichnet). Allgemein sind alle Steuerpflichtigen berechtigt zum Abschluss einer steuerlichen Vorvereinbarung mit dem örtlichen Finanzamt, und diese Vereinbarung kann sich auf alle Bereiche des Steuerrechts erstrecken. In der Praxis wird von der steuerlichen Vorvereinbarung vorwiegend in bezug auf die Einkommensteuer Gebrauch gemacht und im allgemeinen zwecks Vereinbarung einer speziellen Besteuerungsmethode für in Tschechien beschränkt Steuerpflichtige.

Die amtliche Stellungnahme ist eine Feststellung des Finanzministeriums zu einem entsprechenden Antrag des Steuerpflichtigen oder seines Vertreters. Die amtliche Stellungnahme beruht nicht auf einer verkündeten gesetzlichen Vorschrift, und es gibt auch kein rechtliches Verfahren für die Abgabe einer amtlichen Stellungnahme. Es gibt keine zentrale Politik für das steuerliche Auskunftswesen, und die Abgabe einer amtlichen Stellungnahme ist dem Ermessen des einzelnen Beamten im Finanzministerium überlassen. Jeder Steuerzahler kann eine amtliche Stellungnahme beantragen, und diese kann auf jedem Gebiet des Steuerrechts abgegeben werden. Die amtliche Stellungnahme ist weder für den Steuerpflichtigen noch die Finanzbehörde verbindlich. Im allgemeinen lässt sich zwischen einer namentlich adressierten amtlichen Stellungnahme (die sich auf eine spezielle Sachlage eines bestimmten Steuerpflichtigen bezieht) und einer nicht adressierten amtlichen Stellungnahme (die sich auf eine bestimmte Lage eines nicht genannten Steuerpflichtigen bezieht) unterscheiden.

Ausser den oben beschriebenen Auskünften gibt es in der Tschechischen Republik eine sehr wichtige Verwaltungsmassnahme, die zum besseren Verständnis des Auskunftswesens erwähnt werden sollte. Es handelt sich um die sogenannte "D"-Massnahme, die die zweideutigen und unklaren Teile des Steuerrechts betrifft. Eine "D"-Massnahme wird vom Finanzministerium nicht auf Antrag getroffen; sie ist deshalb für die Zwecke dieses Artikels nicht als verbindliche Auskunft zu betrachten. Eine "D"-Massnahme beruht nicht auf einer ausdrücklichen Vorschrift in einer Rechtsurkunde, und für den Gebrauch der "D"-Massnahme gibt es auch keine rechtliches Verfahren. Der Inhalt derselben kann auch nicht als rechtsgültige Regelung betrachtet werden. Die Auskunft sollte lediglich als Mitteilung darüber, wie das Finanzministerium eine bestimmte Rechtsvorschrift auslegt, oder als Ausdruck der Rechtsauffassung des Ministeriums verstanden werden.

Gegenwärtig verfügt die Tschechische Republik über keine Gesetzgebung oder Praxis auf dem Gebiet der internationalen Auskünfte.

Resumen

La legislación fiscal vigente en la República Checa se promulgó, tras una importante reforma, el 1 de enero de 1993 y, aunque ha evolucionado con mucha rapidez, no es perfecta. El sistema checo de consultas aún no se ha desarrollado.

En su conjunto, el sistema checo de consultas dispone actualmente de los siguientes instrumentos:

- las consultas concluidas con las autoridades financieras locales;
- los dictámenes oficiales del Ministerio de Hacienda, comunicados a petición;
- las medidas "D" del Ministerio de Hacienda.

A efectos de la presente Ponencia, los primeros se incluyen en la categoría de consultas vinculantes (CV), y los otros dos en la de consultas no vinculantes (CNV).

Las CV son acuerdos concluidos entre el contribuyente y la autoridad fiscal respecto de la base imponible y la obligación tributaria. La fuente legal es el artículo 31, párrafo 7, de la Ley de Administración de Impuestos y Tasas, No. 337/1992 Coll., modificada (LAIT). En general, todos los contribuyentes pueden negociar una CV con una autoridad fiscal local, respecto de todos los campos de la legislación tributaria. En la práctica, la CV se utiliza en la mayoría de los casos en el Impuesto sobre la Renta y, en general, en la negociación de un método impositivo especial para los checos no residentes fiscales.

Las CNV son declaraciones del Ministerio de Hacienda emitidas a petición del contribuyente o de su representante. No se basan en ninguna disposición reglamentaria y tampoco existe procedimiento legal al respecto. No existen directrices generales sobre conclusión de estos acuerdos, ya que la emisión de la CNV es discrecional del funcionario competente del Ministerio de Hacienda. Cualquier contribuyente puede solicitar una CNV, que puede formularse respecto de todos los campos de la legislación fiscal. La CNV no vincula ni a la administración ni al contribuyente. En general, podemos distinguir entre CNV personalizadas (responden a la situación de un contribuyente particular) y CNV anónimas (responden a la situación de un contribuyente desconocido).

En la República Checa existe, al lado de las que acabamos de describir, una medida administrativa que conviene mencionar para comprender mejor el sistema de consultas. Es la llamada medida "D" que se refiere a las partes ambiguas y oscuras de la legislación tributaria. Las medidas "D" del Ministerio de Hacienda no se adoptan a petición y no se consideran consultas a los efectos de esta ponencia. Una medida "D" no se basa en una disposición reglamentaria y no existe procedimiento legal que rija su utilización. Además, una medida "D" no puede ser considerada reglamentación legal. Esta disposición debe ser tratada simplemente como una notificación de la forma en que el Ministerio de Hacienda interpreta una determinada reglamentación legal, o como la expresión del dictamen jurídico del Ministerio de Hacienda.

Actualmente no existe en la República Checa legislación ni práctica alguna sobre consultas internacionales.

Denmark
Danemark
Dänemark
Dinamarca

National Reporter
Bente Møll Pedersen*

1. General introduction

1.1. Background

Denmark has had a statutory advance tax ruling procedure since 1983. The focus of this national report is the formal rulings system based on specific statutory provisions. The advantages to taxpayers of a highly developed advance rulings system are obvious. It provides certainty and predictability to the taxpayers regarding the tax consequences of a particular future transaction. Because of the complexity and unpredictability of tax legislation it goes without saying that a binding ruling system is beneficial to taxpayers.

The formal ruling procedure also provides advantages to the tax authorities. The tax authorities get the opportunity to preview the types of transactions that taxpayers are currently contemplating. Thus, the tax authorities may suggest changes in the law where future problems are exposed and they can prepare for the issues they will face in future assessments.

The advantages and disadvantages are described in more detail in the general report.

1.2. Definition

The term "advance ruling" as used in this report is defined as "A more or less binding statement from the revenue authorities upon the voluntary request of a private person, concerning the treatment and consequences of one or a series of contemplated future actions or transactions". General guidelines issued by the tax authorities outlining their interpretation of certain provisions of tax legislation are not within the parameters of the report. Similarly, permission for special tax treatment only available upon application, e.g. joint taxation and change of financial year will not be considered within the term.

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