

# Tax, Legal & Business News

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Tax, legal, accounting, advisory and assurance newsletter

October 2013

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## Topic of the month

# BEPS Action plan

On 19 July 2013, the OECD published an Action Plan regarding Base Erosion and Profit Shifting (BEPS). The main purpose of the Action Plan is a proposal of **15 action points** focused on transparency and disclosure, application of double tax treaties, permanent establishments (PE) and transfer pricing (TP) and general BEPS actions (such as digital economy, interest deductions and hybrid arrangements). The expectation is that the outcomes should be implemented by individual countries in their tax legislation. If implemented, these action points can affect business models of multinational and local companies and their holdings, financing and other similar structures.

There is a very high focus on **substance** in the Action Plan, and this comes through in various ways – e.g. in the comments on the PE rule, on the recharacterisation of transactions, on the ownership

of intellectual property, on risks shifting in legal contracts, and the need to align TP with value creation activities.

Taxpayers may be pressed for more transparency and information disclosure. This may facilitate ease of compliance for business. Specifically, the Action Plan sets a tight deadline of one year to re-examine TP documentation in order to ensure transparency for the tax administration (e.g. taxpayers are expected to provide information on their global allocation of the income, economic activity and taxes paid among countries).

### Reaction in Czech Republic

From the perspective of the Czech authorities, we recommend closely monitoring what specific actions will be developed at the level of the OECD and the EU Commission – to see what changes might be needed for the Czech legislation or the

approach of the tax authorities. For example, the Action Plan might require that Czech tax legislation introduces an obligation of multinational companies operating in the Czech Republic to disclose key taxation attributes of their business model. We however believe that any new changes must not increase the administrative burden on taxpayers and must not make the tax system overly complicated (such as the introduction of controlled foreign company rules).

To Czech companies we suggest **monitoring** the progress of the Action Plan, especially with regard to the **PE actions, TP actions and data disclosure**. Taxpayers should proactively perform internal risk assessments of their existing and planned structures, considering the increased focus on 'substance' and the potential for more transparency and public disclosure of their tax return information and allocation of profits around the world.

### Reaction abroad

Some countries have already taken local actions in response to the BEPS Report and the Action Plan.

Recently, the Dutch government issued a statement about changes in its international tax policy.

Specifically, it announced proactive measures against the avoidance of single taxation of interest and royalty payments that are flowing through "conduit" companies established in the Netherlands. These measures involve stricter substance requirements for conduit companies, proactive exchange of information with foreign tax authorities on Dutch Advance Pricing Agreements, and no tax rulings for holding companies with insufficient substance.

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**Tax**

## **Enforcement of the rules relating to unpaid VAT guarantee is being postponed**

The General Financial Directorate has announced another postponement of the enforcement of the rules related to the customer's VAT guarantee in cases where the payment to the supplier will be remitted to a bank account unpublished by the tax administrator and the supplier will not pay the VAT to the authorities. The current legislative situation has led to this shift of the previously announced postponement, and the tax administrator will not appeal to the guarantor to pay the arrears until 31 December 2013.



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## **OECD News about Transfer Pricing**

On 30 July 2013, the OECD released two important documents. Both of them documents can be important for any Czech company that undertakes transactions with foreign related parties. They are relevant especially to transactions involving intangibles.

### **1. Revised Discussion Draft on**

#### **the Transfer Pricing Aspects of Intangibles**

The Revised Discussion Draft also specifies what constitutes an intangible. This definition is broader than the common practice in the Czech Republic since it also considers contractual rights and government licences as intangibles. On the contrary, location savings and other market features are not intangibles.

The document provides guidance on how to correctly allocate the "return related to an intangible". The terms of the legal contract will be the starting point, but the location where material functions related to intangible assets are performed is considered to be the key factor. For this purpose, the OECD applies the concept of "important functions" that create value in the business.

Importantly, a multinational company (MNC) would be free to outsource certain functions (such as R&D and marketing) to its affiliates. But it will be entitled to returns related to the resulting intangibles only if, in substance, it performs and controls the important functions and bears and controls the corresponding risks related to the development, maintenance and protection of the intangible.

In other words, it would not be sufficient just to fund the activity from a holding company's money. If the holding company's activity is limited

to funding, it would only be entitled to some risk adjusted return on capital. This development is in line with the OECD Action Plan focusing on substance. On the downside, proper Profit Split analysis would need to be used to divide all profits in the MNC's value chain, and these analyses will be complicated.

The Revised Discussion Draft analyses specific fact patterns and provides 27 examples which can serve as guidance in performing tax audits. Notable examples include those focusing on the value created in the distribution and R&D arrangements, and the appropriateness of intra-group charges for the mere use of the company name.

It is yet to be seen how the Revised Discussion Draft will be applied in practice by the tax authorities and, in particular, how the binding rulings on intangibles will be affected in the Czech Republic. Nevertheless, the Czech tax authorities may try to use these principles in the risk assessments and tax disputes to the extent that this is to their advantage.

#### **2. White Paper on Transfer Pricing Documentation**

The White Paper proposes a standardised approach to the transfer pricing (TP) documentation based on a two-tiered structure in order to reduce compliance costs for taxpayers. At the same time, the content of the documentation should

enhance transparency and improve risk assessment through fuller disclosure of taxpayer information. For example, the OECD proposes that an MNC would disclose information on its financial and tax positions in each country (including a listing and description of all available APAs and rulings, a schedule showing the number of employees in each country, financial results, and details on intangibles).

In summary, the two-tiered approach to the TP documentation is generally similar to the Masterfile approach

of the EU Transfer Pricing Forum (EUTPF), which is embedded in Decree 334 of the Czech Ministry of Finance on TP documentation. The OECD proposes broader information disclosure than the EUTPF approach. It is yet to be seen if and when these disclosures will be reflected in the Czech tax legislation as well.



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**Law**

## **22. 10. 2013, in Prague, Večery ČINu: Patent and protect**



Organized by the Czech innovation, Guarantee: PwC Czech Republic,  
Hosted by: Jiří Kocík, PwC Legal  
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**What can happen if you do not patent or patent search?**

**We can protect an idea that is not patented?**

**How to use patents as a source of ideas?**

**Innovate!**

**PwC Czech Republic is a partner of the Czech innovation.**

## Accounting

### PwC issued a pocket overview of key IFRS standards

PwC experts on IFRS and Czech accounting standards prepared a pocket edition of an overview of the key requirements of the International Financial Reporting Standards (IFRS) in the Czech language. The publication provides an overview of the similarities and differences between IFRS (as at December 2012) and Czech accounting legislation (as at 30 June 2013), and you can find it on [PwC's website](#).

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## Employees

### The place of work in the work permit does not limit foreign nationals on business trips in the Czech Republic

A foreign national with a valid work permit may also carry out his work in places other than what is specified in the work permit as the place of work performance. Therefore, you can delegate your foreign staff on business

## Employees

trips in the Czech Republic without any doubts. For example, it won't be an error if the employee carries out his work in Prague for the time needed to fulfil his tasks even if the work permit has a stated place of work performance in Pilsen because your company seat is there.



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### E-filings will be mandatory for employers

Employers will be required to file the prescribed forms of the Czech Social Security Administration (CSSA) electronically from January 2014. To create the forms, they can use their own software or interactive CSSA forms (Software602-free installation). Delivery of the forms can then be performed electronically by using an advanced electronic signature (qualified certificate required) or by direct delivery to the CSSA databox. Encryption is required by the CSSA as one of the protective elements, but it is not necessary when using an interactive form or if it is delivered to the databox. Representing persons then must not forget to deliver a power of attorney. The e-filing requirement is postponed until 2015

for entrepreneurial individuals and until 2016 for doctors (sick notes). Also from January 2014, VAT returns and their annexes will have to be filed electronically. However, e-filing will not be mandatory for individuals whose turnover for the preceding 12 months did not exceed CZK 6,000,000.

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### Czech-Slovak pensions will even up

From December 2013, people who receive a Czech and Slovak pension at the same time will be able to obtain a 'top-up contribution' after fulfilling the relevant conditions. The Czech Social Security Administration will even up the total pension to an amount which would correspond to the situation if they had only received the Czech pension for an insurance period occurring before the breakup of the country. The amount of the top-up contribution will depend on the difference between the sum of the current Czech and Slovak pensions and the hypothetical pension.



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## Study

### Movie ticket prices will increase only minimally this year

Czech cinema admission revenues will rise over the next five years by an average of 3.1% per year, and the average price of a ticket should also rise by about 2%. People have concerns about the further development of the economy: they're saving money and not spending so much for entertainment. The PwC Global Entertainment & Media Outlook 2013-2017 study assumes that the average admission price in the Czech Republic will cost approximately CZK 127 in 2017.

The differences between local cinemas where you pay around CZK 50 for one ticket today and the most modern multiplexes where admission for the latest 4D performance costs over CZK 300 will continue to escalate, according to PwC estimates.

Last year, higher VAT caused the increase in ticket prices. Cinema operators themselves are rather discouraged from further raising ticket prices. Some of them are even coming up with different marketing or discount promotions to encourage attendance.



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## The Academy

### **IFRS, CZ GAAP and SK GAAP courses with The Academy: in season 2013/14, we have new portfolio and better prices!**

**FRESH TOPICS** - our new portfolio of CZ GAAP, SK GAAP and IFRS courses contains the most interesting updates, changes and topics in this area

**BETTER PRICES** - we have decreased the prices of all courses so now you can attend a one-day course for CZK 6 900

- 7 November 2013      Consolidation - basics according to IFRS and difference to CZ GAAP
- 13 November 2013      Deferred tax according to CZ GAAP and IFRS - accounting and tax perspective
- 14 November 2013      IFRS Update for 2013
- 18 November 2013      SK GAAP framework, differences to CZ GAAP and preparation of financial statements
- 25 November 2013      Consolidation - more complex groups, transactions under common control and IFRS amendments
- 6 December 2013      CZ GAAP - accounting for correction of PY errors - changes in 2013
- 11 December 2013      First time adoption of IFRS and Notes to financial statements according to IFRS
- 12 December 2013      Financial statements prepared according to IFRS as adopted by EU - 2013
- 20 February 2014      Accounting for leasing according to CZ GAAP and IFRS, new exposure draft of IAS 17
- 13 March 2014      Revenue recognition according to IFRS and impact of planned amendment to IAS 18
- 10 April 2013      Basics of IFRS and differences between CZ GAAP and IFRS
- 11 April 2013      Accounting for provisions and impairment according to IFRS
- 22 April 2013      Accounting treatment of business transformations, Czech accounting and tax news for 2014
- 9 September 2013      IFRS 9 – update for 2014

#### How to register?

For more information and registration, please visit our webpage [www.pwc.cz/academy](http://www.pwc.cz/academy). Should you have any questions, please write an email to [the.academy@cz.pwc.com](mailto:the.academy@cz.pwc.com) or contact Daria Šašková, tel.: +420 251 152 446.

[www.pwc.cz/academy](http://www.pwc.cz/academy)

## We invite you

- 17. 10. 2013 in Prague, conference:  
**Shared Service Centres Conference**

Partner: PwC Czech Republic

- 21. – 22. 10. 2013 in Prague, international conference:  
**Lawtech Europe Congress 2013**

Partner: PwC Česká republika

For more information:  
[www.lawtecheuropecongress.cz](http://www.lawtecheuropecongress.cz)

For Fraud Forum member – free entry  
(For more information:  
[www.pwc.cz/fraudforum](http://www.pwc.cz/fraudforum))

- 12. 11. 2013 in Prague, conference:  
**Restrukturalizační fórum 2013**

Held by: Turnaround Management association

„Up the slope!“  
For more information:  
[www.turnaround.cz/tmaforum](http://www.turnaround.cz/tmaforum)

These events are in Czech. Details available at [www.pwc.cz/events](http://www.pwc.cz/events)



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