

DOCUMENTATION PREPARED DURING THE INSPECTION CAN BE UNRELIABLE

Please note one of the recent judgements of the Supreme Administrative Court (SAC) concerning transfer pricing (II FSK 2288/14). The SAC stated that the transfer pricing documentation prepared during an inspection by tax or tax inspection authorities can be unreliable.

The case concerned a company that provided inward processing services for and upon the order of a related party.

During the inspection by the Tax Inspection Office, the arm's length nature of the fee for the above services was challenged. The inspection authorities found the transfer pricing documentation prepared by the taxpayer unreliable because it was prepared during and for the needs of the inspection being carried out and was signed by persons who did not hold any positions in the period under inspection. The taxpayer's income in respect of the services performed for the related party was assessed using the transactional net margin method.

The taxpayer argued that art. 9a of the CIT Act in the wording applicable in the period under inspection did not oblige taxpayers to prepare transfer pricing documentation within time limits set but only to submit it upon the request of the tax authority.

The SAC upheld the inspection authority's decision and stated that the taxpayer was obliged to prepare the transfer pricing documentation required by art. 9a of the CIT Act as soon as the co-operation with the related party was started if the value of the transaction exceeded values set out in art. 9a.2 of the above Act.

If the above issue applies to your activities and you are interested in our assistance in this respect, please do not hesitate to contact your advisor or our secretary's office.

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