

Transfer prices: meaning and definition from constitutional law perspective

Abstract

The thesis deals with the problem of the definition of transfer prices in the substantive tax law, which in general terms it puts in connection with the constitutional requirements arising from the theory of law and normative formation. Thus, the basic grounds for the regulation of transfer pricing in Act No. 586/1992 Coll., on Income Taxes and the OECD Model Double Tax Convention as primary sources of law, legislative definition of this area in domestic and international tax law are defined. These are further elaborated into the detailed level of the methodology of determining the transfer price, which follows from the Instruction of the General Tax Directorate D - 34 and the OECD Transfer Pricing Guideline, and are also subjected to a critical examination in terms of their legal bindingness, position in the legal system, but also from the perspective of the rule of law maxim in the sense of the clarity of the law and its predictability. On the basis of the submitted argumentation, it is concluded that none of the above-mentioned documents defining the procedure by which the transfer price is to be determined is a binding source of law *a limine* and will always constitute only a non-binding instruction or guide to its determination (in the case of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations) or an internal normative act (in the case of the Instruction of the General Tax Directorate D-34). It is also suggested that the current solution, where the application of the procedures for determining the transfer price is considered to be a matter of administrative discretion, is probably an erroneous legal framework created by the Supreme Administrative Court, since it is in natura a question of fact, the assessment of which should be left to an appointed expert in court proceedings. This concept then places the Supreme Administrative Court in a position where it has to deal with considerable detail in the findings of fact, attempting to interpret legally documents which are not sources of law and, moreover, involving a great deal of technical detail and the application of statistical methods, which may be considered inappropriate. The above analysis of recent jurisprudence then demonstrates precisely that it is often problematic and difficult for the Supreme Administrative Court to grasp the entire matter of transfer pricing and to see all the details, which may lead to decisions that are substantively incorrect or *a limine* constitutionally inconsistent.

Klíčová slova: transfer pricing, constitution, aspects