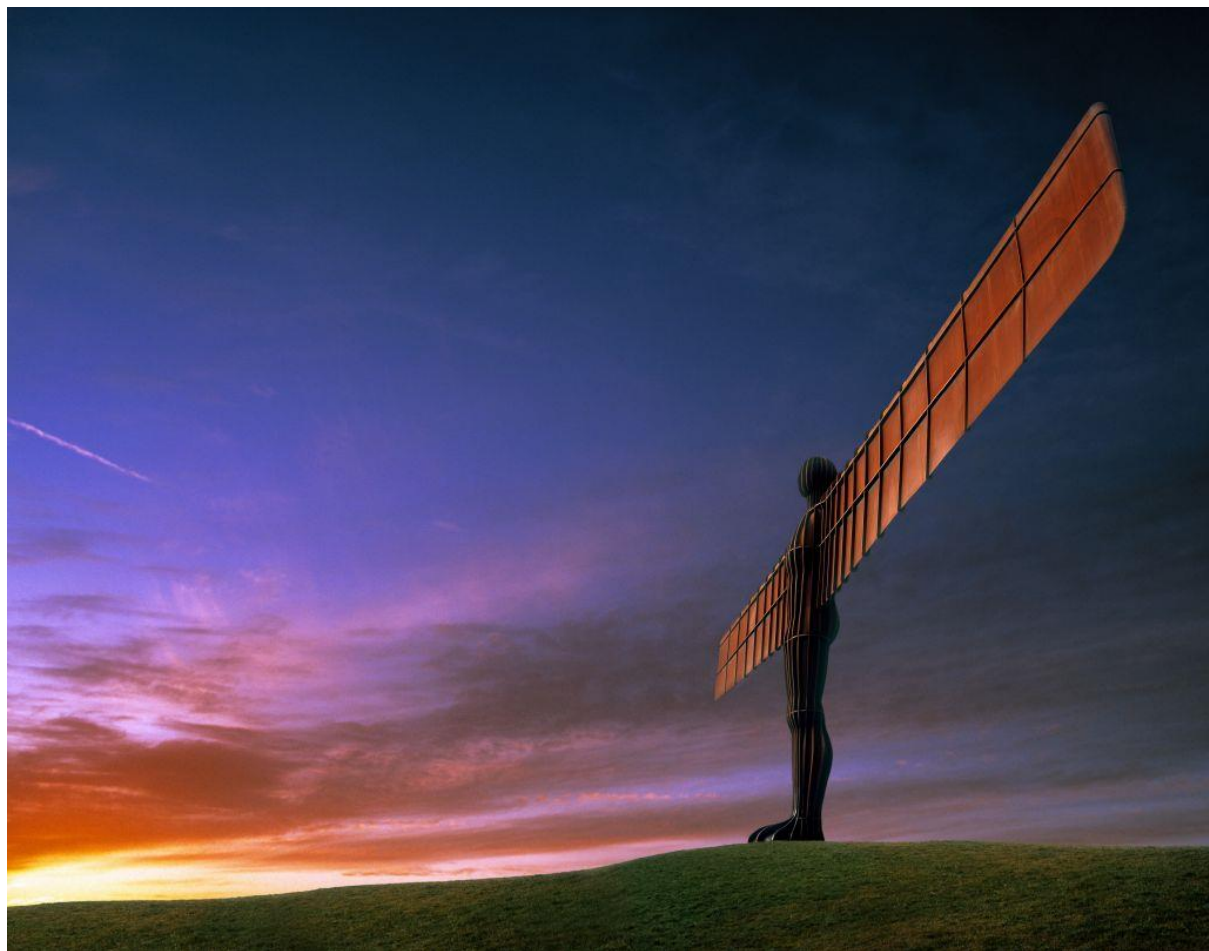


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Central and Eastern Europe Tax Firm of the Year  
International Tax Review European Tax Awards  
2012, 2013, 2014

# Tax News+



11 November 2014

# Tax News+

**Below you will find the tasks and potential issues arising from key tax law changes of the past month and recent weeks. We would be ready and glad to discuss with you any of your company specific issues.**

## **Notable changes to the OECD Transfer Pricing Guidelines**

The OECD recently publicized the final, revised version of Chapter 5 of the Transfer Pricing Guidelines. This chapter of the Guidelines contains guidance regarding the preparation and content as well as the relevant data and information required in transfer pricing documentation. Revision of the chapter was primarily warranted by BEPS (Base Erosion and Profit Shifting), which is becoming increasingly important topic. Its aim is to ensure the taxation of income in the state where the actual economic activity of the taxpayer is carried out. This requires increasing transparency and verification of the economic activity of multinational companies on a global level. Information necessary to achieve this goal has now been incorporated into the Guidelines. Such information should be provided to the tax authorities by the companies during the course of potential tax audits within the scope of 'country-by-country' (CbC) reporting. With respect to the international attention and focus on this topic, FY 2016 may be affected by the changes which are set to take place in certain countries, including Hungary.

Taking into account the fact that Hungarian transfer pricing legislation is based on the OECD guidelines, foreseeably our clients will become subject to the changes resulting from the implementation. The greatest challenge for companies will likely be the preparation of the CbC report. The new standards significantly reform the current practice. The most significant change as compared to current practice will be that information provided at a group-level will be required in a standardized, controlled form. For example, the classification of the activity of each taxpayer and the actual place of management will have to be separately listed for all group members.

According to the global survey carried out by Deloitte and based on the responses of approximately 2,400 companies, the majority of CEO-s think that a simple excel spreadsheet would not be sufficient for the collection and analysis of the data and the preparation of the CbC report. They suggest that, a more complex solution would

be necessary with respect to the preparation of the CbC report. The preparation of such a report would potentially require significant amounts of extra time to be spent. Half of the respondents taking part in the survey expected that the extra time to be spent would exceed 200 working hours on a yearly basis.

The policies which require implementation have already been set forth. Based on these new requirements it is essential that companies prepare themselves for the forthcoming challenges and implement procedures which facilitate the tracking of relevant changes. The Transfer Pricing division of Deloitte would be pleased to provide up to date, practical advice to its clients on how to best manage these changes.

## **Transfer pricing lessons of Apple`s case**

On 30 September 2014 the European Committee released a report in which it initiates a proceeding against Ireland and indirectly against Apple in relation to the suspicion of the provision of forbidden grants and incentives. Within the European Union it is not permitted to provide benefits to companies in the form of grants and incentives. Previously, this issue had solely been examined from the perspective of the directly provided grants and incentives, however, the analysis of European tax regimes from this viewpoint were not in the focus of the European Committee. In the Apple case, the European Committee investigated the taxation of Apple in Ireland. As a result of this investigation the European Committee set forth that the Apple company group received unwarranted benefit as compared to its competitors due to the extraordinarily low amount of corporate tax payable. In addition to the case of Apple Fiat and Starbucks also came under review. These group companies also developed their company structure through the involvement of countries with low tax rates. The establishment of the above structures may result in an effective tax rate of a few percent for these companies. This few percent tax rate is considered extremely low from a US or a European Union perspective. Therefore, such cases seem likely to attract the attention of the relevant authorities. One

of the most significant areas subject to inspection by the relevant authorities is the intercompany transfer pricing and the market pricing supporting analysis. This area of analysis is significant based on the fact that with the determination of the prices in intercompany transactions large amounts of cash can be transferred to countries with preferential taxation regimes.

The primary aim of transfer pricing regulations and transfer pricing principles developed within a company group is the fair allocation of the revenue realized as a result of transactions with related parties. During the allocation of the revenue the real functions performed and the risks undertaken by the entities involved in the transactions need to be taken into consideration. The Apple case clearly illustrates that the global regulatory practice has become stricter in comparison to the previous practice of the tax authorities. The aim of the stricter regulations is to ensure more sophisticated audit of the global operation of multinational companies. The regulations should be independent from where the company possesses seats or related parties. Accordingly, the quality of the transfer pricing policies developed by the companies is of paramount importance. The absence of the detailed analyses and documentation supporting the arm's length nature of the prices applied in the related party transactions may trigger serious transfer pricing and other consequences for the companies. Accordingly, when developing the transfer pricing policies, the whole operation and the business strategy of the company group should be taken into consideration. Furthermore, the company should be able to define activities performed in various countries, related functions, risks and expected

profitability. Companies are often handling solely the transfer pricing risks relating to a certain country. In these cases the interests of other countries are ignored or handled by inadequate documents. It is becoming increasingly clear from ongoing international cases and initiatives that this approach is no longer sufficient for the fulfillment of the transfer pricing requirements. Over recent years transfer pricing has become an essential focus point in terms of taxation issues and therefore has become one of the most hot-topic of the Hungarian tax authority as well.

### **Changes affecting the border crossing of arrivals with Schengen visa**

According to the compulsory regulations of the European Union, frontier checks will be supplemented by a fingerprint based personal identity check from 11 October 2014 on the outside borders of the Schengen area (i.e. Ukrainian, Romanian, Serbian and Croatian border and international airports with respect to Hungary). This change affects citizens of third countries who are required to have Schengen visas that include fingerprint mark, therefore, the visa is stamped with 'VIS' sign. Fingerprints will be scanned and used for identification purposes each time a person enters the Schengen area. Upon exit this procedure will be implemented on a random basis. Prevention and uncovering of abuse of short-term visas are the main objective of the new system.

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