

**Dr. Borut Bratina**

## **Kodeks o upravljanju in revizorjeva odgovornost**

### ***Corporate governance code and auditor's responsibility***

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**POVZETEK** ● *Zadnja gospodarska kriza je nazorno pokazala, kakšne negativne posledice ima lahko slabo in neodgovorno korporativno upravljanje, zato se iščejo rešitve v trdnejši zavezi ravnanja v skladu s kodeksi upravljanja, ki kot priporočena dobra praksa upravljanja bolj ustrezajo podjetjem kot zakonska določila. Ker pa kodeksi niso zavezujoči kot zakonodaja, morajo podjetja pregledno razkrivati, ali upoštevajo kodekse ali ne. Te izjave morajo izdelati po zakonu, nato jih pregledajo revizorji hkrati z računovodskimi izkazi. Tudi za pregled teh poročil prevzemajo revizorji odškodninsko odgovornost.*

**Ključne besede** ● *kodeks upravljanja, poslovno poročilo, revizorjevo poročilo, revizorjeva odgovornost*

**SUMMARY** ● *The recent financial crisis has clearly shown the negative consequences of an irresponsible corporate governance. Solutions are being searched for in stricter obligations with regard to governance code compliance, since the latter are more suitable for companies than hard law. But, due to the non-binding nature of soft law, it is necessary for the respective companies to transparently disclose their compliance with such codes. Such disclosure must be prepared in the form of report, which is mandatory by law and is reviewed by certified auditors together with the financial statements. The auditors take the same liability for damages for the review of the report as they do for the financial statements.*

**Key words** ● *corporate governance code, business report, auditing report, auditor's responsibility*

**Darinka Hvala, Aleksander Ferik**

## **Ugotavljanje transfernih cen**

### ***Determination of transfer pricing***

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**POVZETEK** ● *V prispevku so predstavljena trenutno aktualna področja transfernih cen, ki povzročajo največ težav družbam v skupini povezanih oseb. Prispevek obravnava tematiko z vidika slovenske in mednarodne zakonodaje. V zadnjem času so najaktualnejše obresti iz*

naslova posojil med povezanimi osebami, saj jih družbe v skupini zaradi različne obravnave v slovenski zakonodaji v primerjavi z mednarodno težko zagovarjajo v davčnih inšpekcijskih pregledih. Podobno velja za področje tanke kapitalizacije, ki jo v prispevku obravnavamo z vidika ZDDPO-2. Na podlagi pobude BEPS (zmanjševanje davčne osnove in preusmerjanje dobička) so v ospredje stopile tudi storitve med povezanimi osebami, saj BEPS poudarja predvsem pomen vsebine pred obliko. Katere družbe dejansko opravljajo določene funkcije ter nosijo s tem povezana tveganja, je po obdobju BEPS-a postalo pomembno vprašanje in ena izmed težav za mednarodna podjetja, ki se soočajo z odstopanjem realnosti poslovanja od zastavljenega modela transference cen. Prispevek obravnava tudi problematiko različnega odnosa držav do naknadnih prilagoditev iz naslova transference cen in problematike dvojne obdavčitve.

**Ključne besede** ● povezane osebe, transferne cene, tanka kapitalizacija, posojila med povezanimi osebami, Smernice OECD-ja za določanje transference cen, primarna prilagoditev, sekundarna prilagoditev, prikrito izplačilo dobička

**SUMMARY** ● The article focuses on the transfer pricing topics, which seem to be causing the most problems for companies that are part of multinational groups. These topics are covered from both the Slovene as well as international legislative perspectives. Recently, interest charged on related party loans have become a particularly interesting topic, since in the event of tax inspections, most companies face difficulties in defending this interest, especially due to its different treatment from the perspective of the Slovene compared to international legislation. Consequently, Slovene companies also face issues in relation to thin capitalisation - an issue also addressed in the article from the perspective of the Slovenian Corporate Income Tax Act. With the introduction of the new BEPS initiative, where the importance of substance over form is particularly emphasised, also inter-company services came into focus. Additionally, the question of which companies actually perform certain functions and carry associated risks, has become another important question after the implementation of the BEPS initiative and also one of the main issues for multinational companies, which are faced with discrepancies between the reality of business and the transfer pricing model applied. The article also covers issues arising from different attitudes of countries towards the ex-post transfer pricing adjustments and consequently the problem of double taxation.

**Key words** ● Related parties, transfer pricing, thin capitalisation, loans between related entities, OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, primary adjustment, secondary adjustment

Mag. Saša Jerman

## **Oprelitev poslovnih kombinacij po SRS-jih in MSRP-jih**

***Definition of Business Combinations according to SRS 2016 and IFRS***

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**POVZETEK** ● *Transakcije s podjetji so po MSRP 3 transakcije ali drugi dogodki, v katerih prevzemnik pridobi obvladovanje nad enim podjetjem ali več. Tej opredelitvi skladno s prilogo A MSRP 3 ustrezajo tudi transakcije, ki se včasih imenujejo "prave spojitve" ali "spojitve enakih". V angleškem izvirniku se opredelitev transakcij s podjetji glasi: "A transaction or other event in which an acquirer obtains control of one or more businesses."*

Že jezikovna razlaga citirane določbe omogoča izluščiti bistvo transakcij s podjetji: i) prevzem obvladovanja (angl. obtain of control) oziroma zahteva, da prevzemnik pridobi obvladovanje nad enim podjetjem ali več, ter ii) predmet prevzema je podjetje v ekonomskem smislu, to je povezan niz aktivnosti in premoženja, s katerimi se lahko ravna in o katerih se odloča z namenom zagotavljanja donosa v obliki dividend, nižjih stroškov ali drugih gospodarskih koristi neposredno naložbenikom ali drugim lastnikom, članom ali udeležencem. Bistvena elementa transakcij s podjetji sta torej dva: prevzem in podjetje.

**Ključne besede** ● prevzem, združitev, podjetje, poslovne kombinacije, transakcije s podjetji, MSRP 3, SRS 2016

**SUMMARY** ● *According to IFRS 3 Business Combinations are transactions or other events in which an acquirer obtains control of one or more businesses. The definition, according to Appendix A to IFRS 3 covers also transactions sometimes referred to as 'true mergers' or 'mergers of equals'.*

*Even the literal interpretation indicates the essential elements of any business combination: i) obtaining of control – acquisition of one or more businesses; and ii) the subject of acquisition is a business in economic terms, i.e. an integrated set of activities and assets that is capable of being conducted and managed for the purpose of providing a return in the form of dividends, lower costs or other economic benefits directly to investors or other owners, members or participants. Essential elements of business combinations are therefore two: acquisition and business.*

**Key words** ● acquisition, merger, business, Business Combinations, transactions with businesses, IFRS 3, SAS 2016

**Dr. Andreja Primec**

## **Nefinančno poročanje po ZGD-1**

***Non-financial reporting under the revised Companies Act ( ZGD-1)***

**POVZETEK** ● *Zahteva po razkrivanju nefinančnih informacij, uveljavljena z Direktivo 2014/95/EU, je trenutno zadnja v nizu zahtev po preglednem in jasnem poročanju gospodarskih družb. Prvotni namen razkrivanja podatkov, ki je sprva vključeval podatke o finančnem poslovanju in upravljanju družb, je bil povrnitev izgubljenega zaupanja širše javnosti v kapitalske trge in korporativno upravljanje. Nefinančno poročanje naj dolgoročno pripomore k izboljšanju njihove družbene odgovornosti, saj z razkrivanjem podatkov o nefinančnem poslovanju družba izkazuje svoj odnos do naravnega in socialnega okolja. To je pomembna informacija za vse zainteresirane, ki z družbo*

sodelujejo ali se odločajo z njo sodelovati. Prav tako je razkrivanje nefinančnih informacij priložnost tudi za družbe, da si pridobijo ali izboljšajo svoj ugled.

Nefinančno poročanje po določbah ZGD-1 pomeni obveznost za določene velike družbe in skupine, da razkrijejo nekatere nefinančne podatke v obliki izjave o nefinančnem poslovanju in z opisom politike raznolikosti. Prav ta je sestavni del izjave o upravljanju družb, obe izjavi (o nefinančnem poslovanju in o upravljanju) pa sta sestavni del poslovnega poročila gospodarskih družb, za pripravo in objavo katerega so zadolženi in odgovorni organi vodenja in nadzora. Izjavo o nefinančnem poslovanju in opis politike raznolikosti pregleda revizor, pri čemer se omeji na njuno formalno popolnost.

**Ključne besede** ● izjava o nefinančnem poročanju, politika raznolikosti, korporativna družbena odgovornost

**SUMMARY** ● Request for disclosure of non-financial information, established with Directive 2014/95/EU, is presently the last one in the set of requests for transparent reporting by companies. The initial intention of disclosure of information, which included financial and corporate governance information, was to restore the lost confidence of the public in the capital markets and corporate governance. Non-financial reporting should contribute to improvement of corporate social responsibility in the long run, because disclosure of non-financial information expresses the company's relation to the natural and social environment. This is important information for all interested who work with the company or are still deciding for working with the company. Non-financial reporting is also an opportunity for companies to gain or to improve their reputation.

Non-financial reporting under the Slovenian Companies Act (ZGD-1) means an obligation for large companies and groups to disclose some non-financial information in the form of non-financial statement and with a description of their diversity policy. The latter is a part of the corporate governance statement, and both statements (non-financial and corporate governance) are part of the business report, which preparation and publication is a duty and responsibility of the company's management and control bodies. The auditor checks the non-financial statement and the description of the diversity policy, whereby he is limited to their formal completeness.

**Key words** ● non-financial statement, diversity policy, corporate social responsibility

Mag. Igor Strnad

## **Obligacijski pravni posli s poudarkom na posebnostih pogodb o storitvah**

**Binding legal transactions with emphasis on the specificities of contracts of services**

**POVZETEK** ● Članek uvodoma ponuja osnovne informacije o ureditvi pogodb v slovenskem civilnem pravu. Njihove bistvene predpostavke so urejene v splošnem, posamezne vrste pogodb pa v posebnem delu Obligacijskega zakonika. Osnovni vrsti pogodb o storitvah sta podjemna pogodba (pogodba o delu) ter pogodba o naročilu

*(mandatna pogodba). Obravnavane so njune temeljne predpostavke. Glavni razlikovalni znak med njima pa je, da je pri podjemni pogodbi podjemnik zavezan, da doseže končni rezultat (obligacija rezultata), pri pogodbi o naročilu pa je prevzemnik naročila zavezan, da si bo prizadeval doseči končni rezultat (obligacija prizadevanja).*

**Ključne besede** ● *pogodbe, predpostavke pogodb, podjemna pogodba, pogodba o naročilu*

**SUMMARY** ● *This paper offers the basic information about contracts in Slovenian civil law. Their essential predispositions are regulated in the general, individual types of contracts in the special section of the Code of Obligation. The basic types of service contracts are the contract for work and the contract of mandate. Their essential predispositions are addressed. The main distinctive sign between them is, that the workman by the contract of work is committed to achieve the final result (obligation of result), by the contract of mandate is the contractor committed to put an effort to achieve the final result (obligation of effort).*

**Key words** ● *contracts, essential requirements of contracts, contract of work, contract of mandate*