

## **Summary of APA legislation in Poland**

As of 1 January 2006 the Minister of Finance in Poland may issue, on a taxpayer's request, a decision as to whether a given method and the manner of using this method determining the transfer price between related parties is acceptable. Under the law, the decision will be binding upon the tax authorities in the case of other tax procedures (such as tax audits and tax proceedings).

In fact, the act will not constitute an agreement between the tax administration and an applicant but an administrative decision (an advance pricing decision), however, in this summary the abbreviation "APA" is used.

Under the law, only a domestic entity may apply for the APA. The term "domestic entity" is to be understood as an Income Tax payer, with a seat (place of management) or a place of residence located within the territory of Poland or a foreign permanent establishment situated within the territory of Poland.

As from 1 January 2007, APAs may cover not only transactions between related parties but also would apply to relations between a permanent establishment and its head office.

Procedural issues relating to APAs in Poland are defined in section IIA of the Tax Code (articles 20a-20r). Under the law, the applicant for the APA is obliged to present in the APA application:

- a suggested method for determining transfer prices and, in particular, an indication of one of the methods defined in income tax acts,
- a description of the manner of application of the suggested method in respect of the transaction subject to the APA and, in particular, an indication of the principles for calculating the transfer price, financial forecasts on which the calculation is based, analysis of comparable data used for calculation of the transfer price,
- a description of circumstances which may affect determination of the transfer price, in particular: type, object and value of the transaction, a description of the transactional course, including analysis of functions, assets and risks of the parties to the transaction as well as a description of expected costs to be borne by the parties to the transaction and a description of the economic strategy or other circumstances if they affect the price of the transaction; data concerning the economic situation in the branch of the industry in which the applicant operates, including data concerning business transactions concluded by unrelated parties which were used for calculating the transfer price; an organisational and capital structure of the applicant and its related parties (being parties to the transaction) and an description of financial accounting principles applied by the related parties (being parties to the transaction),
- documents exerting an important influence on the level of the transaction price and, in particular, texts of agreements, arrangements and other documents indicating intentions of the parties to the transaction,
- a suggested term of the arrangement,

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- a list of the related parties with whom the transaction will be concluded, including their consent to submit to the authority all documents concerning such transactions and provide necessary explanations.

The above elements are statutory elements of the application for the APA. The application and all accompanying documents must be submitted in Polish.

Taxpayers can require more information about the APA even before the formal application is submitted. Doubts concerning both the APA procedure and the scope of the APA application can be handled in writing or during pre-filing meetings.

When a formal application is submitted and the procedure is initiated, there is a possibility to organize a discussion meeting with a requesting party before the APA decision is issued.

The APA regulations set out 3 different types of the APA depending on the related parties applying:

1. unilateral
  - a. domestic (only for domestic related entities)
  - b. foreign (for domestic entity related to a foreign entity or domestic entities related to the same foreign entity)
2. bilateral
3. multilateral

The Minister of Finance has:

- 6 months to issue unilateral agreement,
- 12 months to issue bilateral agreement,
- 18 months to issue multilateral agreement.

However, the period mentioned above can be prolonged on the basis of general rules mentioned in the Tax Code.

Currently, the period for which the APA in Poland is valid shall not be longer than 5 years (extended from the initial 3-year term). The APA may be extended for another 5 years under the condition that the criteria used to evaluate such an agreement have not changed and the entity applies to prolong the APA decision at least 6 months before it expires.

Charges for the APA applications are imposed on the basis of the Tax Code. This is equal to 1 % of the value of the transaction that is subject to the APA application, however, following restrictions apply:

- in domestic APA the fee cannot be less than 5.000 PLN and not more than 50.000 PLN;
- in foreign unilateral APA the fee cannot be less than 20.000 PLN and not more than 100.000 PLN;
- in foreign bilateral/multilateral APA the fee cannot be less than 50.000 PLN and not more than 200.000 PLN.

The fee for prolonging the APA is equal to half of the initial payment for APA application.

The value of the transaction is verified in the course of proceedings as well as the fee paid for the APA application. Other costs associated with obtaining the APA may be imposed on the

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applicant e.g. the remuneration of experts and translators, costs of travelling of witnesses, experts, translators.

In the case of change of economic conditions resulting in significant inapplicability of the APA, the Minister of Finance may change or annul the APA decision.

If conditions established in the APA decision are not fulfilled by a taxpayer, the Minister of Finance may extinguish this decision with effect from the day when the decision entered into force.

**Remark:**

In the years 2006-2008 twenty APA applications were submitted to the Minister of Finance. There is one bilateral APA application (initially submitted as an unilateral one) and the remaining requests are applications for unilateral APAs. As at 31<sup>st</sup> December 2008 nine positive decisions were issued and three proceedings were remitted.

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