

Summary of APA legislation in Poland

As of 1 January 2006 the Minister of Finance in Poland may issue, on a request, a decision as to whether it finds a given method of determining the transfer price between related parties 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-legal 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 domestic entity is a domestic entity in the meaning of the provisions of the tax law concerning Personal Income Tax and Corporate Income Tax and, as of 1 January 2007, a permanent establishment in the meaning of those provisions that is situated within the territory of Poland. As from 1 January 2007 APA 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 APA in Poland are defined in section II a of the Tax Code (articles 20a-20q). Under the law the applicant for the APA is obliged to present in the APA application:

- suggested method for determining transfer prices and, in particular, indication of one of the methods defined in corporate income tax act,
- description of the manner of application of the suggested method in respect of the transaction subject to the APA and, in particular, 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,
- 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 flow, including analysis of functions, assets and risks of the parties to the transaction as well as description of expected costs to be borne by the parties to the transaction and 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; organisational and capital structure of the applicant and its related parties (being parties to the transaction) and description of the financial accounting principles applied by the related parties,
- documents exerting an important influence on the level of the transaction price and, in particular, text of agreements, arrangements and other documents indicating intentions of the parties to the transaction,

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- suggested term of the arrangement,
- 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 the Polish language.

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

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

The APA regulations set out 3 different types of 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

Minister of Finance has:

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

However period mentioned above can be prolonged on the basis of general rules mentioned in 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 agreement 6 months before it expires.

The Ministry of Finance imposes a charge for the APA application. This is equal to 1 % of the value of transaction that is subject to 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 extending APA is equal to half of the initial payment for APA application.

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The value of transaction is verified in the course of proceeding so is the duty to pay. All other costs associated with obtaining APA shall be covered by requesting party as well.

After obtaining APA taxpayers are obliged to file report on its implementation together with their yearly income tax return form. If the economic/market conditions (part of critical assumptions) should change the taxpayer can ask for changing or abolishing of APA. At the same time, the competent authority that issued decision has the right to change or abolish it (effects start from the moment of delivering the decision). If taxpayer does not fulfill its obligations resulting from APA the competent authority that issued a decision has a right to nullify the decision with the effects carrying back.

Remark:

As at 31 December 2006, nine APA applications were submitted to the Minister of Finance. All APA applications are unilateral ones. There are no bilateral or multilateral applications filed to date. One APA decision was issued and the remaining requests are currently analyzed. There were over 20 pre-filing meetings with taxpayers that are interested in submitting their own APA requests.

For more information please contact Ministry of Finance at the following address:

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Departament Podatków Dochodowych / Income Taxes Department
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