

Transfer Pricing Alert

KPMG in Poland

April 2018

Transfer Pricing Forum – key information (benchmarking studies and simplified APA)

On April 12th, 2018 the first meeting of the Transfer Pricing Forum (hereinafter: "the Forum") organized by the Ministry of Finance took place. The main topics of the Forum were practical problems and challenges related to benchmarking analyses.

During the meeting the assumptions were presented regarding the introduction of a simplified procedure for concluding advance pricing agreements.

Transfer Pricing Forum is a new initiative of the Ministry of Finance aimed at discussing transfer pricing among representatives of the Ministry of Finance, tax advisors and the business community. In addition, the invitation to participate in the Forum for judges from administrative courts and representatives of the National Revenue Administration is being considered.

Benchmarking analyses

During the Forum the issues related to preparation of benchmarking analyses and recommendations for the use of data for such analyses were discussed, such as:

- methods of processing and interpretation of results, based on the calculated market range,
- the use of comparative data based on the (local) data from the Polish market,
- preparation and frequency of updating of market analyses for financial transactions,

- comparative data search strategies,
- significance and types of adjustments that increase data comparability in benchmarking analyses,
- the need to prepare a benchmarking analysis for low value-added services.

As part of the discussion, the issue of the necessity and appropriateness of preparation of documentation for transactions carried out between related domestic entities was also discussed.

Simplified advance pricing agreements

In addition, the representatives of the Ministry of Finance presented general outlines of the assumptions of the draft provisions on simplified advance pricing agreements (hereinafter: "sAPA"). The sAPA procedure is to be applied to specific transactions such as low value adding services and simple intangible assets' transactions (license fees).

According to the assumptions, the procedure for obtaining sAPA should last 3 months, while the decision itself could bind for a maximum of 3 years, but with the possibility of extension. The fee for submitting the sAPA application is to be fixed irrespective of the transaction value. Its height will be lower than for the standard APA procedure.

Under the sAPA procedure, the decision will be issued on the basis of taxpayer's statement regarding functional analysis, a standardized application consisting of the

descriptive part and financial data and indicators, as well as with the support of the actual transaction data. The obligation to present financial forecasts was abandoned, however, raising the need to introduce critical criteria for a given transaction.

The sAPA procedure, as well as the current proceedings in the matter of obtaining regular advance pricing agreements, assumes adequate protection of sensitive data by covering it with the tax confidentiality clause. The Ministry of Finance plans only a publication of annual statistics on APA and sAPA decisions issued.

Changes in the Tax Ordinance

As it was announced, the draft law with amendments to the Tax Code in connection with the introduction of regulations on sAPA will be released to public and subject to consultations in the near future (end of April - beginning of May this year). The project has now been submitted to intra-departmental consultations within the Ministry of Finance.

In addition, changes are planned for the standard APA decisions. The change is to concern the duration of the advance pricing agreements. Currently, the decision may be effective from the date of submitting the APA application. After the changes it would apply from the beginning of the year in which the application was submitted.

Explanations to CIT/TP and PIT/TP forms

Additionally, until the end of May 2018, it is planned to publish explanations of doubts regarding the filling in of CIT/TP and PIT/TP forms.

Next meetings

The date of the next meeting of the Transfer Pricing Forum is not yet known. The frequency of meetings is also not yet determined. We will keep you informed about its further works.

If you have any questions regarding topics discussed during the Forum, or other issues related to transfer pricing matters, please do not hesitate to contact us.

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