



Keep „arm's length” to build strength

Q&A Summary (8h April 2025 in Warsaw)

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May we understand that we do not need prepare TP documents for transactions which fulfil the conditions of safe harbour rule and we basically have no risk on those transactions from TP perspective?

Regarding the first part of the question, yes – if all safe harbour criteria are met, applying the safe harbour regulations means that the taxpayer is not obliged to prepare the TP documentation. However, please remember that the tax payer is still required to submit the TPR-C form in which also the safe harbour transactions are reported.

With regard to the second part of the question on the security guaranteed by the safe harbour regulations, please note that the correct application of the safe harbour in fact significantly reduces the TP risk of transactions being challenged by tax authorities, which, however, still have the right to audit the transaction.

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Please note that safe harbour regulations in force in Poland apply only to two types of transactions:

<Low value added service transaction>

the criteria include among others the restriction on the mark-up level applied:

- No more than 5% mark-up of the costs in case of purchase of services
- Not less than 5% mark-up of the costs for the provision of services

Please note that except the mark-up level restriction, there are also other criteria that need to be met in order to apply the harbour regulations for low value added service transaction.

<Loan>

the criteria include among others the restriction on the interest rate applied; for 2025:

- 3M base rate + maximum 2.60 percentage points interest/margin for borrowers
- 3M base rate + minimum 2.00 percentage points interest/margin for lenders

Please note that except the interest rate restriction, there are also other criteria that need to be met in order to apply the harbour regulations for loan transaction.

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Even ultimate mother company does not have obligation to prepare a master file in its jurisdiction, should a master file be prepared?

Yes. Please note that the obligation to prepare the Master File is determined based on the Polish regulations. It means that it is possible that such obligation will not arise at the ultimate mother company level based on the Japanese or international regulations, but the Master File obligation will arise based on the Polish level, based on the Polish TP rules. In such case the Polish taxpayer is obliged to prepare the Master File even if such document has not been prepared on the group level.

Polish taxpayer is obliged to possess the Master File if the entity meets three conditions:

- it is included in consolidated financial statements of the Group;
- the Group has revenues of at least PLN 200 million in the previous year; and
- is obliged to prepare the local transfer pricing documentation (this means its transactions exceed the value thresholds of the transactions qualify for the obligations to prepare Local File).

What languages are acceptable for master file in Poland?

Polish and English. If you are requested by the tax authority to prepare Polish translation, you need to prepare it within 30 days.

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Now we discussed what accounting documents to be issued to make TP adjustment. We understand that there are two ways, namely, adjusting price of the transaction by issuing invoice and adjusting only profitability by issuing credit or debit note. We understand that we need to adjust other taxes and charges such as VAT, customs, WHT in the former option. The latter one is not.

Yes, your understanding is correct.

Do you recommend to adjust to median not to the first quartile, seeing the latest attitude of tax authority?

Basically yes. We need enough analysis and reason if we make TP adjustment to lower level than median.

The recent practice of the tax authorities as well as proposals for new regulations within the European Union show that tax authorities more and more often treat the median as a reference point to which the adjustment should be made. However, it is still possible to argue that some other point within the interquartile range is more appropriate to be applied in a particular case. So in practice, each case is discussed with the authorities individually and at the end we may agree to apply some other profitability level within the range taking into consideration the functional profile of the company, but of course the median is nowadays the most preferable by the tax authorities.

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We discussed that it may be an option to make a new benchmarking study, when actual transaction price or PLI was out of the aim's length range and there was a significant change in business environment during the year. If the result of the new bench marking study support the transaction price made in the year, may we understand that the TP adjustment is not needed anymore?

Yes. It is an option. If your transaction price in the year falls within the range of the new bench marking study, you do not need to make TP adjustment.

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Actually we had a feeling that the number of application of APA is small and it is not so common solution for general tax payers. Is the number of application increased so much in very recent years. In our experience what companies tend to utilize APA, for example, sectors, scale of transactions, location of related party in the transaction, or other specific situation?

Most of all, the APA is the only way for the taxpayers to receive a guarantee from the tax authorities that their transactions are arm's length. It's correct that historically the number of the APA requests was limited, but because of the increasing awareness of the advantages the APA decision brings, as well as because of the simplification of the APA procedure the number of the APA requests and the APA decisions issued is increasing. We expect the number will be increased more and more.

Regarding the transactions types covered by the APA decision, the most of them refer to: manufacturing and distribution activities, intercompany services of all kinds and royalty payments for the use of intangibles. Please also note that companies choose APA especially when the transaction value is high, or there's a recurring TP risk that they want to eliminate. APAs are clearly gaining ground in high-risk and high-value structures, particularly in the production and distribution sectors.

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APAs are issued for the taxpayers operating in many various sectors, whereas: industrial manufacturing, automotive, pharmaceuticals, and logistics are most common sectors.

As for the location of related parties, APA is applied more for transactions with jurisdictions with which Poland has active cooperation like European Union or United States. However, as Poland is also actively cooperating with Japan, it would also be possible to receive e.g. a bilateral APA with Japan.



Thank you



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