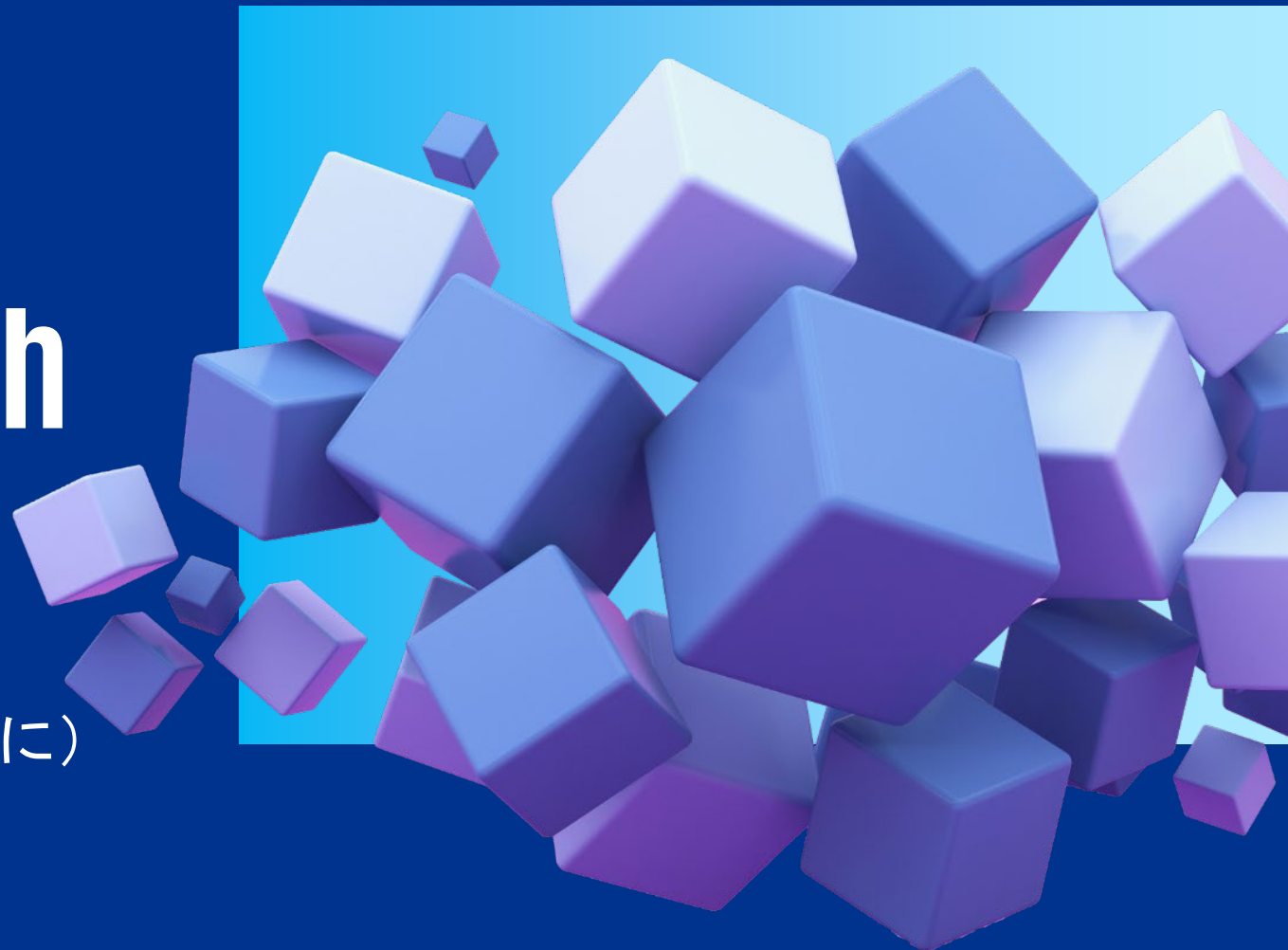


Keep „*arm's length*“ to build strength

Transfer Pricing in Polish practice

ポーランド移転価格税制対応
の勘所（移転価格調整を中心に）

2025年4月8日



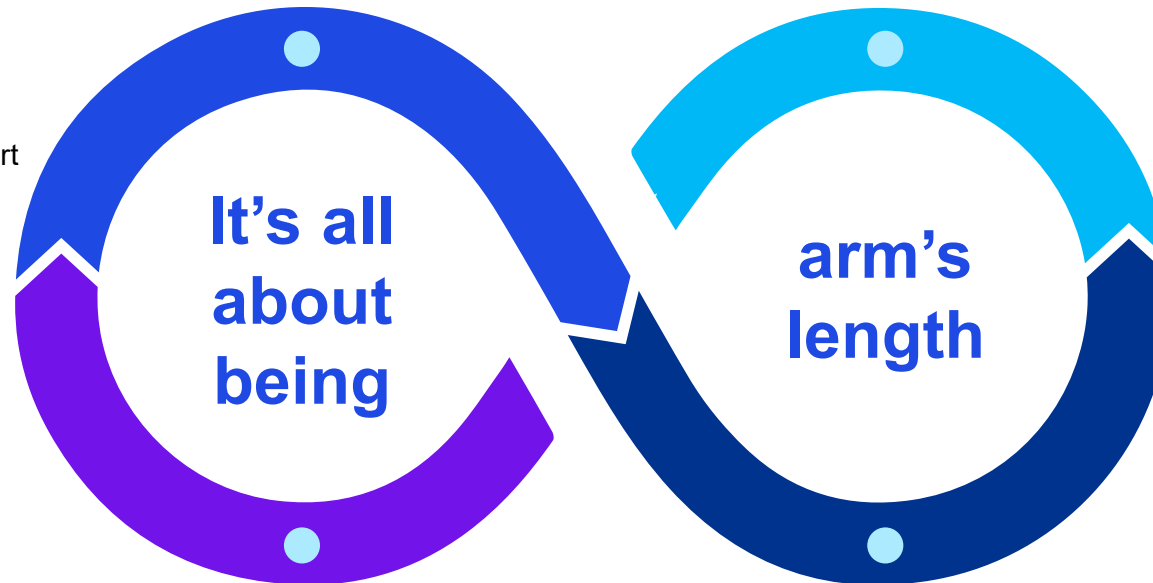
Agenda

1. Arm's length principle – what does it mean for the Company?

- Arm's length definition
- TP statement on the arm's length character of the transaction (as part of the TPR-C form)
- Potential consequences

3. How to ensure arm's length result?

- TP policy tailored to functional profiles of entities in the Group
- Safe harbour regulations
- TP adjustment aiming to bring the result to arm's length level



2. How to assess if the transaction is arm's length?

- TP documentation aiming to verify and confirm the arm's length nature of the transaction
- TP reporting aiming to provide tax authorities with benchmarks on taxpayers' results

4. How to confirm the TP policy with tax authorities?

- Advance Pricing Agreements (APA) enable taxpayers to receive confirmation their transactions are arm's length

1. Arm's length principle

What does it mean for the Company?

01

Arm's length definition

Art. 11c of the CIT Act*

„Related entities are obliged to set transfer prices on terms and conditions that would be agreed between unrelated entities.”

Potentially problematic issues
KPMG may help with!

- What entities are considered as „related entities”? What does exerting significant influence mean?
- What about transactions with entities based in tax haven?
- What terms and conditions of the transaction should be taken into consideration?

02

TP statement on the arm's length character of the transaction

As part of the TPR-C form the management board members state that transactions with related entities / entities based in tax haven are arm's length.

Potentially problematic issues
KPMG may help with!

- How will I know if the transactions are arm's length?
- Which transactions need to be benchmarked?
- How to sign the TPR-C form by a foreigner?
- When and how do I need to submit the TPR-C form?

03

Potential consequences

- For the company: additional income assessment + tax sanction rate
- For the management board members: personal liability for the TPR-C signed, as well as for the Company's business activity

Potentially problematic issues
KPMG may help with!

- How to limit the risk of additional income assessment?
- How to limit the risk of the management board member's liability?

*based on Article 9 of the OECD Model Tax Convention on Income and Capital

2. Arm's length transaction

How to assess if the transaction is arm's length?

Local File

The main purpose of the Local File is to demonstrate the arm's length character of the transaction.

Master File

The main purpose of the Master File is to demonstrate the arm's length character of the Group TP policy.

CBC-R and CBC-P

CBC reporting allows for the identification of cases of artificial profit shifting between the countries.

ORD-U form

The purpose of ORD-U reporting is for the tax administration to obtain selected information for analysis of the agreements with non-residents.

TPR-C form

The purpose of TPR-C reporting is for the tax administration to obtain selected information for analysis of the arm's length character of the transactions.

Benchmarking study

The main purpose of the benchmarking study is to determine the arm's length range of results.

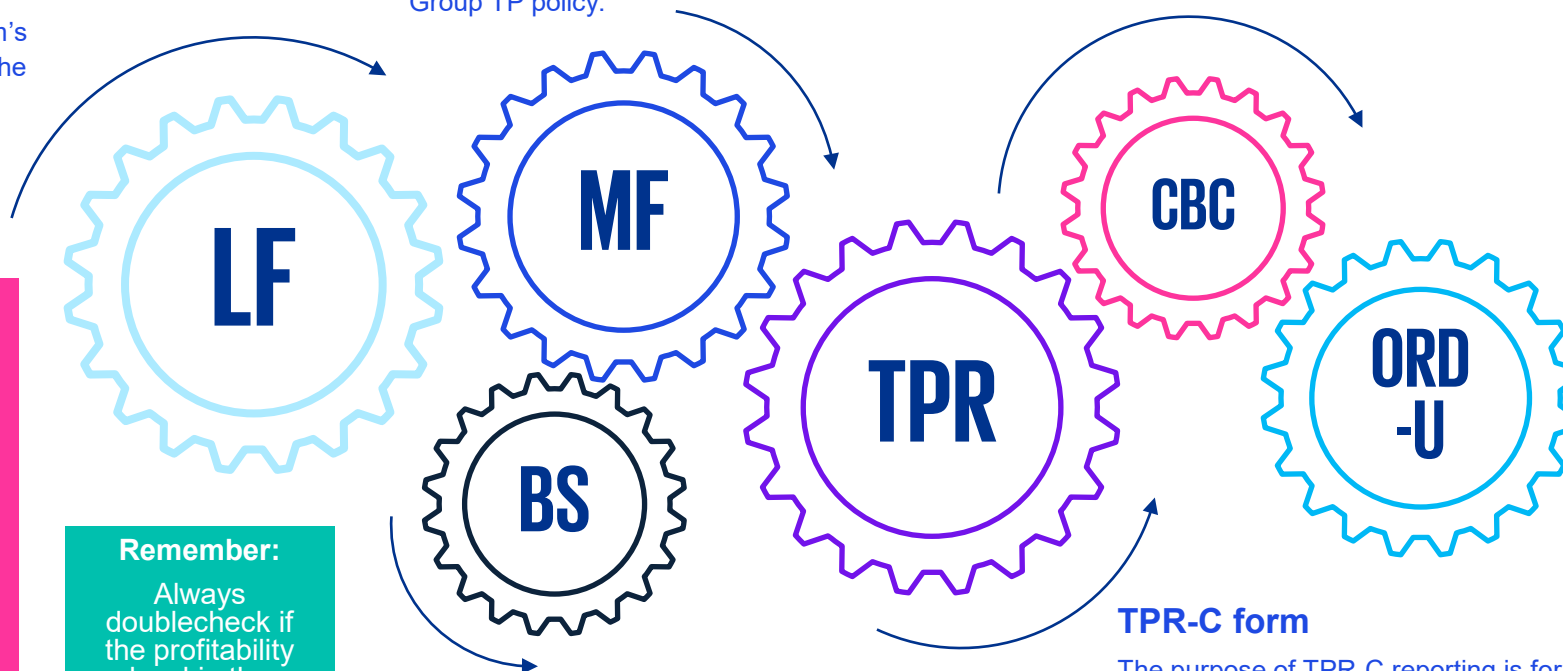
Remember:

Always doublecheck if the profitability level in the transaction falls within the PLI range from the benchmark

Remember:

Everything starts with the proper assessment of the scope of the TP obligation!

- What are TP documentation thresholds?
- What is the type of the documented transaction?
- What is a „homogenous“ transaction?



3. Arm's length result

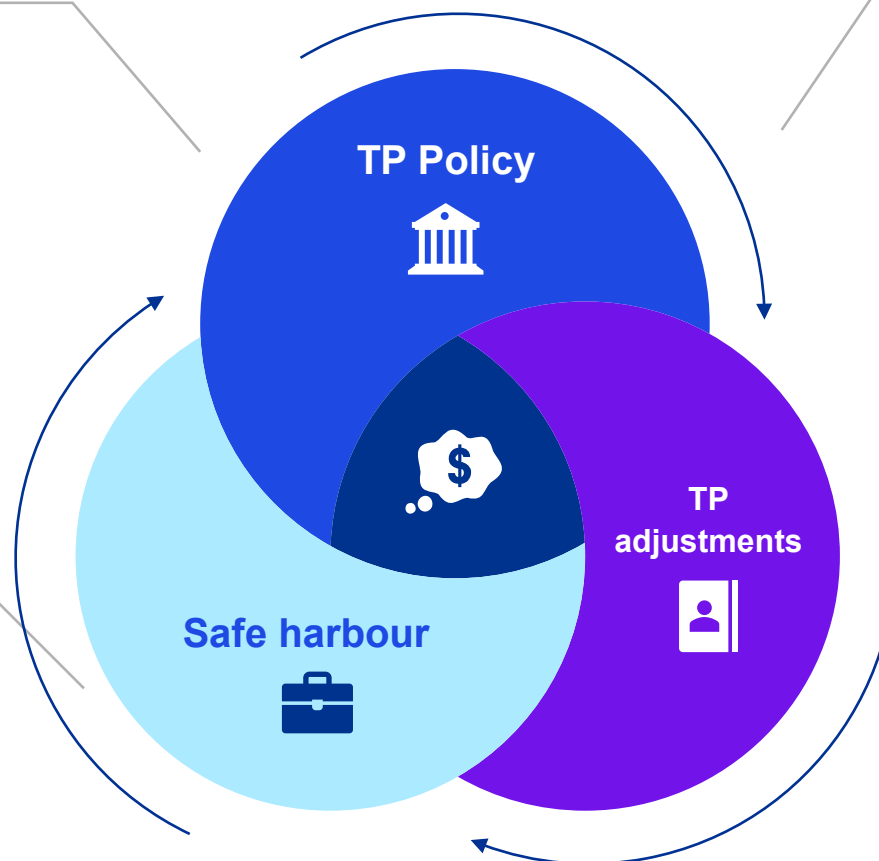
How to ensure arm's length result?

Transfer Pricing policy

- Functional analysis of the Group entities as a starting point to set the arm's length TP Policy
- LRD / contract manufacturer making losses? It's a sign to analyze the TP Policy!
- Presentation of the BS results, including the PLI for each controlled transaction and data sources. Are we within the arm's length range?

Safe harbour regulations

- Guarantee that the transaction is recognized as arm's length after meeting certain conditions
- Only two kinds of transactions! (low value-added services and loans)
- Sometimes unclear (ambiguous) conditions to be met



TP adjustments

- Generally accepted in Poland – after statutory criteria are met!
- It is not intended to bring non-arm's length transactions into line with market conditions!
- Polish tax authorities expect that in the case of entities with limited functions and risks, their profitability will always be adjusted to arm's length level

Potentially problematic issues KPMG may help with!

- What conditions should be met to consider an adjustment as a transfer pricing adjustment?
- What is the reason for the transfer pricing adjustment?
- To what point from BS the PLI adjustment should be made?
- When a TP adjustment should be recognized for tax purposes?
- What accounting document should be used for TP adjustment purposes?

3. Arm's length result

TP adjustments in practice

Adjustment may be defined either as:

- an adjustment according to so-called general principle or
- a transfer pricing adjustment.

The above is dependent on the aim and reason for performing an adjustment.

Transfer pricing adjustments might be performed during the tax year (periodically) or after the end of the tax year.

Transfer pricing adjustment should, as a general rule, be made **prior to the filing of the annual return for the given tax year.**

In practice, tax authorities estimate profitability in the **interquartile range of BS results**, with an increasingly clear preference for the **median**.

Transfer pricing adjustment is subject to regulations and conditions set out in Art. 11e of the CIT Act, **which influence its recognition for tax purposes!***

If transfer pricing adjustment does not result in a change of remuneration for transactions made but is **aimed at adjusting the company's profitability level** to the market level, such an adjustment is **not documented by a VAT invoice.**

Art. 11e of the CIT Act:

Taxpayer may make a transfer pricing adjustment by changing the amount of earned revenue or incurred deductible costs if all of the following conditions are met:

- conditions have been established in controlled transactions performed by the taxpayer during the tax year that would have been established by unrelated parties;
- there has been a change in significant circumstances affecting the terms and conditions established during the tax year or the actual costs incurred or revenues obtained which are the basis for the calculation of the transfer price are known, and ensuring their compliance with the terms and conditions that would have been established by unrelated parties requires a transfer pricing adjustment;
- at the time of the adjustment, the taxpayer has a statement from a related party or accounting evidence confirming that the related party has made a transfer pricing adjustment in the same amount as the taxpayer;
- there is a legal basis for the exchange of tax information with the country where the related party referred to in point 3 has its residence, registered office or management.

in plus adjustment:

- if the conditions of Art. 11e points 1-2 are met - an adjustment **in the period to which it relates**;
- if the conditions of Art. 11e points 1-2 are not met - an adjustment in accordance with so-called general principles (**correction on ongoing basis**)

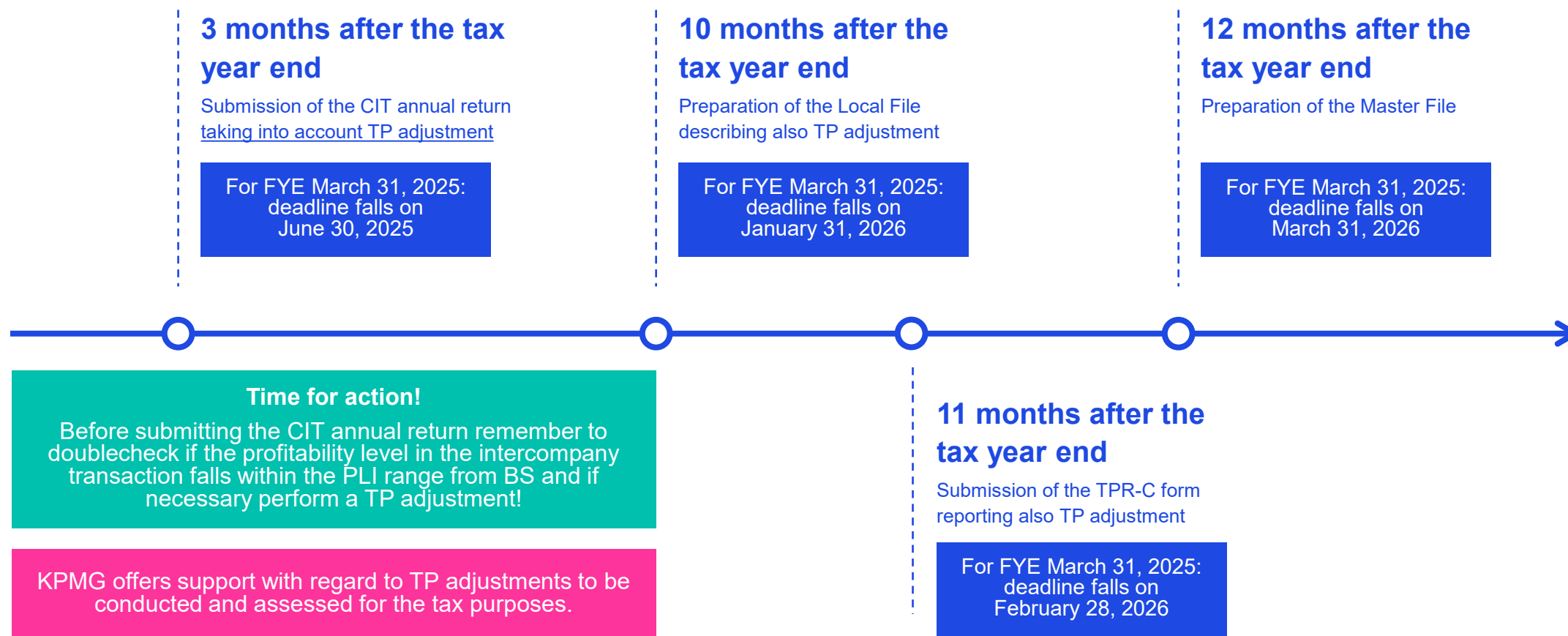
in minus adjustment:

- if the conditions of Art. 11e points 1-4 are met - an adjustment **in the period to which it relates**;
- if the conditions of Art. 11e points 1-4 are not met - in such a case, it is not possible to make the adjustment and thus the costs resulting from the adjustment **cannot be recognized as tax deductible costs!**

*A TPA for the tax year in which the foreign tax assessment was made within international dispute resolution procedures (MAP, APA) does not constitute a TPA under Polish TP regulations!

3. Arm's length result

Important timeline for TP adjustments



4. Arm's length confirmation

How to confirm the TP policy with tax authorities?

Advance Pricing Agreement (APA) is a solution, which enables a taxpayer to obtain a confirmation from the Head of the National Tax Administration that the choice of a method for determining transfer prices in a related-party transaction and the conditions under which a method may be applied are both arm's length.

- APA may be issued for a maximum period of **5 years**. An APA in force can be renewed also for a period of up to 5 years
- Local File exemption – however, transactions are still subject to TPR-C reporting!

**Secure the FYE
March 31, 2026!**

Now it's good time
to consider
submission of the
application!

779

applications for both new and
renewed APAs
(from 2006 to June 30, 2024)*

109

applications for bilateral APAs
(from 2006 to June 30, 2024)*

Instructional deadline for issuing an APA:

- **unilateral**: no later than **6 months**
- **bilateral**: no later than **12 months**
- **multilateral**: no later than **18 months**

Bilateral APAs concluded or negotiated with*:

- | | | |
|-----------|-----------------|-----------------|
| ▪ Austria | ▪ Great Britain | ▪ Slovakia |
| ▪ Belgium | ▪ Ireland | ▪ Spain |
| ▪ Denmark | ▪ Italy | ▪ Sweden |
| ▪ Finland | ▪ Lithuania | ▪ Switzerland |
| ▪ France | ▪ Luxembourg | ▪ United States |
| ▪ Germany | ▪ Netherlands | |

**KPMG offers support
in preparing and
negotiating an
application for an
advance pricing
agreement (APA)**

***Source:** response from the Polish Ministry of Finance to KPMG's inquiry.



Thank you! ご清聴ありがとうございました。



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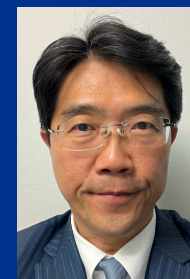
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