



## Poland's MOF discusses simplified APA procedure during first Transfer Pricing Forum

Global Transfer Pricing Alert 2018-015

Poland's first Transfer Pricing Forum, a conference organized by the Ministry of Finance to provide a platform for discussion of transfer pricing issues for both the tax administration and business representatives, took place on April 12, 2018.

Benchmarking analyses were the principal subject of the first forum meeting. The MOF's ongoing transfer pricing work, especially the ministry's work regarding a simplified advance pricing agreement (sAPA) procedure, was also presented.

Interested parties may participate freely in upcoming forum meetings, which will be held quarterly.

### **Benchmarking analyses**

For the conversation on benchmarking analyses, the EU's Joint Transfer Pricing Forum's [Report on the Use of Comparables in the EU](#) constituted the basis for discussion.

The discussion was divided into subareas, corresponding to the eight JTPF recommendations regarding comparability analysis, including:

- Comparable search strategies;
- Use of internal and external comparables;
- Adjustments that increase the comparability of data; and
- Use of regional (local) and foreign (non-domestic) data.

During the meeting, the requirement to prepare a comparability analysis for low-value-added services was

discussed. In the MOF's opinion, due to the current regulations concerning preparation of transfer pricing documentation, replacement of the benchmarking analysis with a simplified description of compliance prepared on the basis of relevant JTPF work cannot be deemed to fulfill the formal documentation requirements. The ministry also announced that introduction of the "safe harbor" concept into Polish legislation is being considered.

### **Simplified APA procedure**

The ministry announced that a draft amendment to the Tax Ordinance Act introducing a simplified APA procedure has been submitted for internal consultations.

The goal of the sAPA is to confirm the transfer pricing methodology applied in the intragroup transactions concerning selected transaction types listed in art. 15e of the Corporate Income Tax Act. That article limits the tax deductibility of expenses related to intangible services (such as management fees) and intangible assets (such as trademark royalties) received from related entities. The limitation of the cost deduction does not apply to transactions covered by a sAPA.

Under the sAPA procedure, the taxpayer would be obligated to submit a standardized application including a descriptive section, as well as information on selected financial data and ratios. The application would not include financial forecast data (which is crucial for the standard APA procedure).

An sAPA would be issued for a three-year period (with the possibility to extend it), compared to standard APAs, which are issued for a five-year period.

The fee for a sAPA fee is expected to be significantly lower than the fee for the standard APA, and will not depend on the value of the transactions covered by the application.

Introduction of the sAPA to the Tax Ordinance Act is expected in June.

### **Other issues**

As part of the process for the implementation of the simplified APA procedure into the Tax Ordinance Act, the ministry is also planning to introduce some amendments to the standard APA procedure. Specifically, the ministry may modify the rules so that a standard APA might be effective starting from the beginning of the year in which the standard APA application was submitted (limited rollback). Under the current legislation, an APA may cover the period starting from the time of submission of the standard APA application.

The ministry also announced plans to amend the legislation to allow taxpayers (with some limitations) to apply for an APA for transactions that are the subject of a tax audit or proceedings before administrative courts at the time of application. Currently, the APA path is unavailable in such cases.

Finally, the ministry confirmed plans to publish additional explanations – "frequently asked questions," or FAQs –

regarding the CIT-TP and PIT-TP forms (simplified transfer pricing statements attached to the tax return for the given fiscal year).

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