

# Advance Pricing Arrangements under the new Russian Transfer Pricing Law



Following the introduction of the new transfer pricing law from 1 January 2012<sup>1</sup>, the Russian Federal Tax Service (hereinafter, “FTS”) started to issue clarifications and comments on application of provisions of this law.

Among of the first clarifications is a Letter<sup>2</sup> explaining the procedure of concluding, executing and terminating an Advance Pricing Arrangement (hereinafter, “APA”) between a taxpayer and the tax authorities.

The key provisions of this Letter regarding the conclusion of an APA are summarised below.

## Preliminary discussion on basic provisions

The taxpayer may apply to the tax authorities with a request to hold preliminary discussions on the provisions of a proposed APA in order to view on whether the conclusion of an agreement is feasible, to reduce the timescale for preparing and reviewing an APA and to determine what documents are required in order to support an APA.

During the discussion the taxpayer will be expected to provide the following information:

- The subject matter and actual conditions of the controlled transaction which would be subject to the APA;
- Description of the economic activities of the parties to the transaction, their country of tax residence and the nature of the relationship between the parties (if any);
- The proposed transfer pricing method as well as the sources for benchmarking / identifying comparative data and any other information that the taxpayer believes it is necessary to provide.

Following the discussion, the tax authorities will notify the taxpayer of its position as to whether an APA is feasible or not as well as estimating the timeframe for its conclusion.

## Application for concluding an APA

An application for concluding an APA and supporting documents should be submitted to the Administration for Transfer Pricing and International Cooperation of the Russian FTS. This can be delivered by hand or by post.

The application form is provided as an appendix to the FTS’s Letter. Supporting documents to the application must comply with the provisions of the Russian Tax Code.

## Review of the Application

The tax authorities will then establish a working group which has 6 months to review the application and consider the terms of a proposed APA. This term can be extended to a maximum of 9 months.

According to the Russian Tax Code, the taxpayer can apply for a Unilateral APA, an arrangement with the Russian tax authorities without participation of foreign corresponding executive authority, as well as a Bilateral or Multilateral APA, being an arrangement involving the participation of the corresponding executive authority from a state with which Russia has a double tax treaty.

To improve the efficiency of concluding Bilateral APAs (taking into account the differences in review periods), the Letter recommends the second (foreign) party to the transaction to initiate the procedure for concluding an APA in its country of tax residence.

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<sup>1</sup> #227-FZ “On introduction of changes to Russian legislation aimed at improving tax transfer pricing rules”

<sup>2</sup> #OA-4-13/85@ “Concerning conclusion of Advanced Pricing Agreements for tax purposes” dated 12 January 2012

The simultaneous filing of documents to various authorized executive bodies by all parties to a transaction corresponds with OECD Transfer Pricing Guidelines and reflects current international practice. It is also possible to conclude Bilateral APAs with several foreign countries in this way.

## Tax authority decision

Following their review of the documents submitted by the taxpayer, the tax authorities will issue one of the following decisions:

- Decision to conclude an APA;
- Justified (reasonable) refusal to conclude an APA;
- Decision to rework the draft APA.

In the case of a decision to rework the draft APA, the taxpayer can reapply to the tax authorities after amending the APA to take into account their comments and providing additional information as required. The tax authorities then have a further 3 month period for review of the reworked agreement.

## Validity period

An Agreement is valid for the period agreed by the parties, but cannot exceed 3 years. The period may be prolonged for a further 2 years at the request of the taxpayer.

## Control over executing the APA

The tax authorities exercise control over the execution of the APA according to the procedures set by the Russian Tax Code.

Under these procedures, the parties may agree the list, format and content of documents necessary to confirm that the terms of the APA have been fulfilled, as well as the frequency of submitting these documents to the tax authorities. The level of detail and frequency of submission may vary depending on the complexity of method for determining the transaction price for tax purposes.

The conclusion of an APA does not exempt the taxpayer from submitting annual notifications on controlled transactions.

## Termination of the APA

APA can be terminated for the following reasons:

- Upon expiry of the validity period;
- By decision of the head (or deputy head) of the Russian FTS if the terms and conditions of the APA have been violated by the taxpayer (as identified during an audit review of the APA) and this has resulted in an underpayment of taxes;
- By mutual agreement of the parties;
- By decision of a court.

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Should you have any questions regarding the issues considered in this information bulletin, please do not hesitate to contact our specialists.

## Contacts

### **Dmitry Kulakov**

Partner

+7 495 787 06 00

[dkulakov@deloitte.ru](mailto:dkulakov@deloitte.ru)

### **Anastasia Spiridonova**

Senior Manager

+7 495 787 06 00

[aspiridonova@deloitte.ru](mailto:aspiridonova@deloitte.ru)

### **Liya Khabibullina**

Manager

+7 495 787 06 00

[lkhabibullina@deloitte.ru](mailto:lkhabibullina@deloitte.ru)

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