## Advance Pricing Agreements: terms and conditions, benefits, challenges

<table>
<thead>
<tr>
<th>Terms and Conditions</th>
<th>Benefits</th>
<th>Challenges</th>
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<tbody>
<tr>
<td>Only large taxpayers can sign Advance Pricing Agreements (&quot;APA&quot;)</td>
<td>Reducing the level of uncertainty in determining whether the controlled transactions are arm’s length, which may protect the taxpayer from additional tax liabilities, fines and penalties</td>
<td>Insufficient mutual trust to commence the APA process</td>
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<td>The APA sets out the criteria for future controlled transactions of the taxpayer (including the transfer pricing method, arm’s length price/profitability levels).</td>
<td>Cost- and time-saving by making transfer pricing audits redundant</td>
<td>No clarity about the approach adopted by the tax authorities in the analysis of typical controlled transactions</td>
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<td>The validity term of the APA cannot exceed five years.</td>
<td>Avoidance of double taxation by means of bilateral and multilateral APAs.</td>
<td>No efficient mechanism to ensure the confidentiality of taxpayer information</td>
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<td>Rigid terms of controlled transactions. External factors can complicate compliance with the APA for the taxpayer (changes in market conditions etc.).</td>
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Advance Pricing Agreements: stages (1/3)

1. Pre-filing discussion of key terms of APA
   - Send an appropriate letter to the State Fiscal Service of Ukraine (the “SFSU”) by e-mail, facsimile, or regular mail
   - Provide, either in the form of a presentation or any other convenient form, the information related to:
     - The subject matter and terms of the controlled transaction(s)
     - The business carried out by the parties to the controlled transactions
     - The possible method of determining the prices/profitability level for transfer pricing purposes.

2. File application for APA
   - The application is to be supplemented with:
     - Draft APA. The preliminary APA structure contains the following:
       - Section 1. Parties to the agreement
       - Section 2. Validity term
       - Section 3. Transactions covered
       - Section 4. Method(s) for determining the prices/profitability level for transfer pricing purposes
       - Section 5. Additional provisions and material assumptions
       - Section 6. Agreement compliance monitoring
       - Section 7. Enforcement of the agreement
       - Section 8. Agreement prolongation
       - Section 9. Agreement termination
       - Section 10. Confidentiality
       - Section 11. Details of the parties
     - The taxpayer’s constituent and registration documents, financial statements, etc.

3. Application for APA is considered
   - The SFSU notifies the taxpayer of creating a working group and of the necessity to discuss the draft APA and/or to submit additional information
   - The SFSU informs the taxpayer of the time, date, and venue of this discussion at least five business days in advance
Advance Pricing Agreements: stages (2/3)

4 Decision-making regarding conclusion of the APA

- SFSU examines the documents and takes one of the following decisions:
  - To proceed with the APA
  - To deny the APA (motivated)
  - To negotiate draft APA with taxpayer

5 Sign the APA

- The APA’s validity term is established by the parties, but cannot exceed five years
- The APA takes effect from January 1 of the calendar year following the year of signing or from the date agreed by both the SFSU and the taxpayer
- The APA must be signed by the taxpayer's authorised representative and the Head (Deputy Head) of the SFSU.
Advance Pricing Agreements: stages (3/3)

Taxpayer’s/SFSU actions

6. Monitoring the implementation of the APA
   • The taxpayer should notify the SFSU of all its controlled transactions
   • After signing the APA, the taxpayer annually reports on compliance with its terms (by 1 May of the year following the reporting year); the form and substance of the report are specified in the APA

7. Prolongation of the APA
   • The prolongation of APA is not envisaged by the current legislation regulating the APA process in Ukraine.

8. Termination of the APA
   Possible reasons for termination
   • Expiry
   • By decision of the Head of the SFSU’s authorized body, following a breach by the taxpayer
   • Early termination by mutual consent
   • Non-reporting/submission of inaccurate and/or incomplete information.