

Advance Pricing Agreements in Poland

– Statistical Report of the National
Revenue Administration
2006 – 2023

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Dear Readers,

The issue of tax consequences arising from transactions between related entities, especially in the context of global economic integration and the growing influence of large capital groups, has gained significant importance in recent years, both for taxpayers and national administrations. The intensification of activities by Polish legislator and tax authorities in the area of intra-group transactions is therefore a direct response to these evolving economic realities. These efforts are further supported by the involvement of the National Revenue Administration (NRA) in international cooperation within the OECD and the European Union, aimed at promoting the application of the arm's length principle by multinational enterprises.

Transactions with related parties, where non-arm's length pricing may lead to various consequences for taxpayers—such as lengthy and costly disputes with tax authorities, additional tax liabilities, significant interest payments, and potential tax penalties—have thus become a major source of tax risk. An effective tool for mitigating such risks and preventing disputes with tax authorities regarding intra-group transactions is the Advance Pricing Agreement (APA). The key benefit of concluding an APA is that it provides taxpayers with assurance that, by using the pricing elements accepted by the Head of the NRA, the prices applied in transactions with related entities will not be challenged by tax authorities. This is guaranteed by relevant provisions in the income tax laws and VAT regulations. Concluding an APA also affects, among other things, the scope of the documentation obligation.

The recent surge in interest in APAs can primarily be attributed to the possibility of exempting transactions covered by the agreement from the limitation on the amount of tax-deductible costs under Article 15e of the Corporate Income Tax Act, applicable between 2018 and 2021.

Regardless of the use of APAs in the context of the above provision, there has been a noticeable increase in the popularity of agreements in Poland in the traditional areas of protection provided by this instrument in the valuation of transactions for tax purposes and the elimination of the risk of double taxation, as well as preferences under transfer pricing regulations.

Undoubtedly, the APA procedure is time-consuming, especially when foreign tax administrations need to be involved. However, it should be pointed out that the APA may be applicable—regardless of the length of the proceeding—from the beginning of the taxpayer's fiscal year in which the application was submitted. Furthermore, the procedure related to concluding an APA may be shorter and less expensive than the process of defending the correctness of transfer pricing model in case of a dispute with tax authorities and is certainly less confrontational. This is particularly important in relation to recurring transactions, of significant value, concluded by entities operating in complex organizational structures, as well as transactions where valuation is inherently difficult, such as restructuring or financial transactions.

Taking into account both the openness of the National Revenue Administration to dialogue with taxpayers and its support for conciliation procedures, as well as the statutory obligation to publicly disclose aggregated information on resolutions concerning advance pricing agreements, we are pleased to present this report, which provides a concise summary of the 18 years of the APA institution's functioning in Poland. We invite you to review the report. Should you have any questions or doubts regarding the APA procedure, please contact the Secretariat of the Department for Large Business.

Marcin Łoboda Anna Sobierajska-Sokół Konrad Szpadzik

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List of Abbreviations

- **DRM Act** – Act of October 16, 2019, on the resolution of double taxation disputes and the conclusion of advance pricing agreements (Journal of Laws of 2023, item 948)
- **CIT Act** – Act of February 15, 1992, on corporate income tax (Journal of Laws of 2023, item 2805, as amended)
- **PIT Act** – Act of July 26, 1991, on personal income tax (Journal of Laws of 2024, item 226, as amended)
- **Tax Ordinance** – Act of August 29, 1997, Tax Ordinance (Journal of Laws of 2023, item 2383, as amended)
- **VAT Act** – Act of March 11, 2004, on value-added tax (Journal of Laws of 2024, item 361, as amended)
- **APA** – Advance Pricing Agreement, in accordance with the DRM Act – a decision confirming that the transfer price in a controlled transaction has been established under conditions that would have been agreed upon between unrelated entities (Article 81 point 1)
- **Unilateral APA** – an agreement concluded between the taxpayer and the Head of the National Revenue Administration, covering domestic unilateral APAs and foreign unilateral APAs (see Article 86 of the DRM Act)
- **Domestic Unilateral APA** – a unilateral agreement concerning a controlled transaction conducted exclusively between domestic related entities
- **Foreign Unilateral APA** – a unilateral agreement concerning a controlled transaction between a domestic related entity and a foreign related entity, in cases where the domestic related entity has not requested an agreement with the foreign competent authority
- **Bilateral APA** – an agreement concerning a controlled transaction between a domestic related entity and a foreign related entity, concluded at the request of the domestic entity with the participation of the tax administration competent for the foreign entity related to the applicant (see Article 87 of the DRM Act)
- **Multilateral APA** – an agreement concerning a controlled transaction between a domestic related entity and foreign related entities, concluded at the request of the domestic entity with the participation of the tax administrations competent for the foreign entities related to the applicant (see Article 87 of the DRM Act)
- **APA Extension/Renewal** – extension of the validity period (until the end of 2015) or renewal (from 2016, in accordance with the terminology adopted in the relevant regulations) of APA for another period under the conditions specified in the repealed Article 20i of the Tax Ordinance or the currently applicable Article 95 of the DRM Act
- **CA** – Competent Authority, i.e., the tax authority responsible for issuing advance pricing agreement for a foreign related entity
- **MNE** – Multinational Enterprise
- **TNMM** – Transactional Net Margin Method
- **NRA** – National Revenue Administration (*Krajowa Administracja Skarbowa*)
- **DLB** – Department for Large Business (*Departament Kluczowych Podmiotów*, organizational division of the NRA within the Ministry of Finance)
- **IOTA** – Intra-European Organisation of Tax Administrations
- **JTPF** – Joint Transfer Pricing Forum
- **OECD** – Organisation for Economic Co-operation and Development
- **OECD TP Guidelines** – OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 2022

Introduction

The Report

The report is divided into three parts:

- **Part 1** (completed) covers the twelve-year period from 2006 to 2017, i.e. the period from the introduction of regulations enabling the conclusion of APAs into Polish law, until the end of the year, in part of which the competent authority for APAs was the Minister of Finance;
- **Part 2** (to be updated in future editions of the report) covers the period from the beginning of 2018, i.e. the first full year in which the Head of the NRA became the competent authority for APAs, until the end of 2023 (in the first edition of the report);
- **Part 3** contains additional information related to the institution of APAs (in this edition - a description of agreement types and links to key websites), as well as details regarding the Transfer Pricing Team of the Department for Large Business (DLB), which is responsible, among other tasks, for conducting APA proceedings.

Additionally, the remainder of the introduction provides an overview of the APA procedure itself.

Future editions of the report will be published periodically. The next one, containing updated data for 2024, will be available at the beginning of 2025.

The data presented in this report is aggregated, meaning it is general in nature and does not provide details on individual cases (such as specifics of the transaction, industry, adopted market strategy, critical assumptions, functional analysis, etc.) that influenced the final content of the issued APAs. Aggregated presentations are based on individual data processed from issued decisions. The publication has been prepared in a way that prevents the identification of related entities and controlled transactions covered by advance pricing agreements.

Legal basis for the APA procedure

Regulations enabling the conclusion of APAs with the Polish tax authority came into effect on January 1, 2006¹, and until the fall of 2019, were included in Section IIa of the Tax Ordinance.

Over the years, the Polish legislator has undertaken measures to enhance the accessibility of this instrument while preserving its core structure. Amendments, resulting from practical experience and international cooperation, especially the achievements of the OECD and JTPF, aimed to resolve interpretative uncertainties, improve regulatory clarity, and thereby increase the efficiency of the tax authority. Significant changes were introduced, in particular, on January 1, 2016, through an amendment² designed to make the APA procedure more taxpayer-friendly while increasing the transparency and efficiency of the process. The amendment also sought to align APA regulations with income tax laws by harmonizing terminology related to associated enterprises.

As of March 1, 2017, the competences of the Minister of Finance, the authority previously responsible for APAs, were taken over by the Head of the NRA.³

On November 29, 2019, the DRM Act came into force, which, among other things, transferred APA regulations from the Tax Ordinance into a separate legal act. The overall concept of issuing APAs remained unchanged, while the modifications introduced were designed to further streamline the process (e.g., allowing foreign investors to submit applications, publishing aggregated information on APA decisions, and tailoring the scope of information reported in the “APA implementation report” to the individual taxpayer’s situation).

The DRM Act addresses the APA procedure in Section III. In matters not covered in this section, the provisions of Section IV of the Tax Ordinance apply accordingly (Article 82 of the DRM Act). The legal basis for conducting bilateral and multilateral APAs also includes the provisions of relevant double taxation agreements, which regulate the mutual agreement procedure (equivalent to Article 25 of the OECD Model Tax Convention on Income and Capital).

¹ Act of June 30, 2005, amending the Tax Ordinance and certain other acts (Journal of Laws of 2005, No. 143, item 1199, as amended).

² Act of September 10, 2015, amending the Tax Ordinance and certain other acts (Journal of Laws of 2015, item 1649, as amended).

³ Act of November 16, 2016, provisions introducing the Act on the National Revenue Administration (Journal of Laws of 2016, item 1948, as amended).

APA Procedure

The APA issuance procedure (concluding with an agreement/decision⁴) generally consists of the following stages:

- submission of an APA application by an eligible entity and payment of the fee;
- formal verification of the application and, if necessary, a request to correct deficiencies, as well as verification of the homogeneity of the controlled transaction and its value, and, if applicable, determination of the amount of the supplementary fee;
- substantive verification of the application and explanatory activities, dialogue between the taxpayer and the Head of the NRA;
- in the case of bilateral and multilateral APAs – negotiations with the foreign competent authority and reaching of an agreement with them;
- issuance of a decision by the Head of the NRA and verification of the implementation of the agreement.

Entities interested in concluding an APA may, before submitting an application, request clarification from the Head of the NRA – during a **pre-filing meeting** organized by the Transfer Pricing Team at the Department for Large Business – regarding any uncertainties related to concluding such an agreement (e.g., the scope of necessary information in an individual case, the procedure, or the expected timeline for its issuance). This is an informal process and is free of charge. **Information on how to request a meeting, as well as the scope of materials that should be submitted before and during the meeting, can be found on the website run by the Ministry of Finance – a link is provided in the third part of the report (APA – Q&A).**

• Application

According to the DRM Act, an APA may be issued at the request of:

- a related entity located or having its place of residence, registered office, or management in the territory of Poland, in relation to a controlled transaction in which this domestic related entity participates (Article 83(1) in conjunction with Article 2(2));
- a foreign investor planning to invest in Poland by establishing a subsidiary that will conduct business in the territory of Poland – in such a case, the application concerns a future controlled transaction that is to be concluded between the applicant and the newly established domestic related entity, for which the APA is issued (Article 84).

⁴ Not every APA proceeding must be finalized with the conclusion of an agreement. During the proceedings, the Head of the NRA may issue notifications, as referred to in Article 88 of the DRM Act or Article 93 of the DRM Act.

APA is not issued (Article 85 of the DRM Act) for controlled transactions that:

- were completed before the application was submitted;
- began before the application was submitted, but on the submission date were subject to tax proceedings, tax audits, customs and fiscal audits, or proceedings before an administrative court for any period within the two tax years preceding the tax year in which the application was submitted;
- are the subject of an application for, or an existing, investment agreement as referred to in Article 20zs § 1 of the Tax Ordinance.

The APA application, in addition to meeting the requirements specified for petition (Article 168 of the Tax Ordinance), must include the information indicated in Article 90 of the DRM Act, such as:

- information about the applicant and the other related parties participating in the controlled transaction;
- information about the controlled transaction covered by the application;
- the requested duration of the APA;
- indication of the type of APA (unilateral, bilateral, or multilateral) and, in the case of an application for a bilateral or multilateral APA, information on the submission of an application to the foreign competent authority by the foreign related entities.

A form to assist in verifying the compliance of the application with the requirements imposed by the DRM Act and the Tax Ordinance can be found on the Ministry of Finance website – a link is provided in the third part of the report (FORMAL REQUIREMENTS OF AN APA APPLICATION).

The application is subject to a fee, which depends on the type of APA (see Part 3 of the report). Until the APA is issued, the applicant may amend the application regarding the transfer pricing verification method, benchmarking analysis, transfer pricing calculation method, critical assumptions, and the requested APA validity period (Article 92 of the DRM Act). During the proceedings, if there are doubts regarding the information provided in the application or the content of the attached documents, the Head of the NRA may request clarification, additional information, or supplementary documents. The Head of the NRA may also arrange a conciliation meeting (Article 91 of the DRM Act).

The process leading to the issuance of an APA, therefore, requires close cooperation between the authority and the applicant. Before a decision is formulated, the taxpayer and the authority engage in a dialogue aimed at finding a solution acceptable to both the applicant and the Head of the NRA.

- **Decision of the Head of the NRA**

An advance pricing agreement specifies, in particular (Article 83(2) of the DRM Act):

1. the controlled transaction covered by the APA and the related entities participating;
2. the functional profile of the related entities involved in the controlled transaction, including, in particular, the functions performed, risks assumed, and assets used or contributed;
3. the method for verifying the transfer price;
4. the method of calculating the transfer price;
5. the critical assumptions based on which the method specified in point 3 is considered to accurately reflect the transfer price;
6. the scope of individual information to be included in the report on the implementation of the advance pricing agreement.

An APA may cover a period starting from the beginning of the taxpayer's tax year in which the application was submitted, and its validity period cannot exceed 5 tax years (and ends at the conclusion of the taxpayer's tax year).

The APA may be renewed for subsequent periods, not exceeding 5 tax years, provided that the elements listed in points 1–5 above have not changed significantly. An application for renewal, which must also include a description of any changes to the terms of the agreement, may be submitted no earlier than 12 months before the expiration of the APA's validity period and no later than 6 months after its expiration.

The APA procedure ensures the appropriate protection of sensitive data – access to the information is limited to the employee handling the case, their supervisor, and the Head of the NRA. Information relating to the entities with whom the agreement has been concluded and those applying for an APA is not made public. The only exceptions are statistical data and aggregate information published in accordance with the provisions of the DRM Act.

Verification of APA implementation and reporting obligations

The implementation of the concluded agreement is monitored.

Firstly, taxpayers who have received an APA from the Head of the NRA are subject to reporting obligations. This includes submitting an annual report on the implementation of the advance pricing agreement for each tax year

⁵ The starting date of the renewed agreement is the day following the expiration date of the previous APA.

covered by the APA, within the deadline for filing the annual tax return, using the specified forms⁶ (through interactive forms: APA-C for legal entities and APA-P for individuals).

Secondly, the Head of the NRA reviews the implementation of the agreement through verifications and, in certain cases, through tax audits (Chapter 3 of Section III of the DRM Act). If the APA is not adhered to during its validity period, the Head of the NRA will officially declare the agreement terminated, issuing a decision that takes effect retroactively from the beginning of the period covered by the APA (Article 105 of the DRM Act).

The desired effect of protection resulting from the APA will only be achieved if the taxpayer complies with the terms agreed upon with the Head of the NRA, who, as noted above, is equipped with appropriate tools to verify the taxpayer's conduct.

In the event of a change in economic conditions that leads to a significant alteration of the agreement's elements, the APA may be amended or revoked by the Head of the NRA before the end of its agreed validity period. The amendment or revocation of the APA can occur at the request of the party or ex officio. In the decision amending or revoking the APA, the Head of the NRA specifies the date from which the agreement is effective in its amended form or the date from which the APA is revoked, taking into account the moment when the change in conditions occurred (Article 106 of the DRM Act).

⁶ The report format is specified in the regulations of the Minister of Finance dated December 23, 2019, regarding the report format on the implementation of the advance pricing agreement for corporate income tax purposes (Journal of Laws of 2019, item 2502) and dated December 23, 2019, regarding the report format on the implementation of the advance pricing agreement for personal income tax purposes (Journal of Laws of 2019, item 2537).

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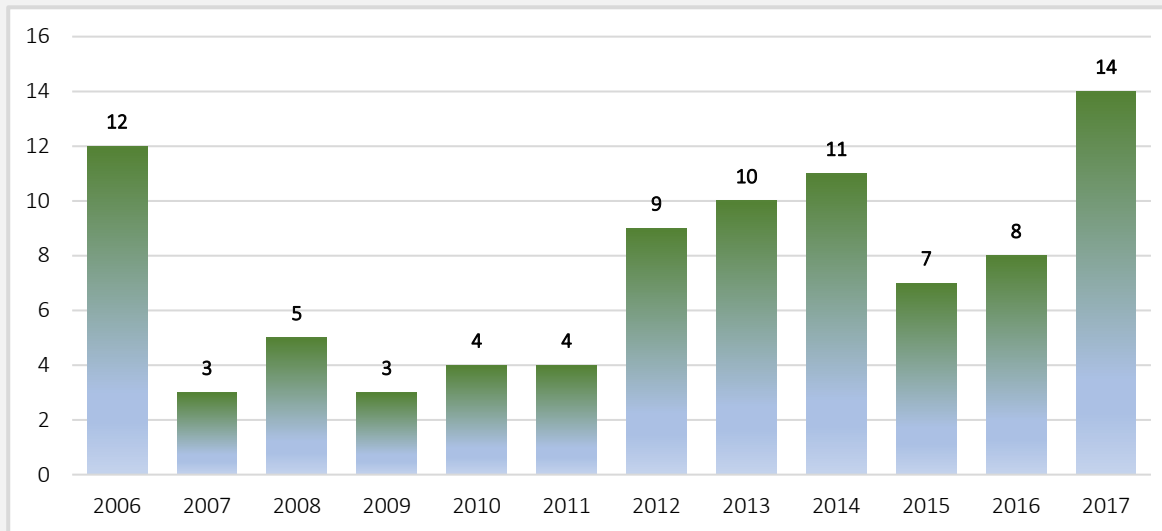
Chart 8. Types of transactions covered by bilateral and multilateral APAs

Chart 9. Methods applied in issued APAs



Applications for APA submitted between 2006 and 2017

Chart 1. Number of APA applications submitted from 2006 to 2017



Between 2006 and 2017, 90 applications for an APA were submitted [Chart 1], including 15 applications for an extension or renewal of the decision's validity period. In the first year of APA regulations being in force in Poland, 12 applications were submitted (all for unilateral APAs). In subsequent years of the analyzed period, an average of seven applications were filed annually. The first application for a bilateral APA was submitted in 2008, and the first application for a multilateral APA - in 2010.

The majority of the submitted applications were for unilateral agreements, with over sixty applications (representing nearly 70% of all submissions between 2006 and 2017). Additionally, 26 applications for bilateral APAs (approximately 29%) and 2 applications for multilateral agreements (approximately 2%) were submitted during this period [Chart 2, Chart 3].

By the end of 2017, 74% of the applications had been processed, either through the issuance of an APA or other resolution concluding the proceedings.

Chart 2. Applications submitted from 2006 to 2017 by type of APA

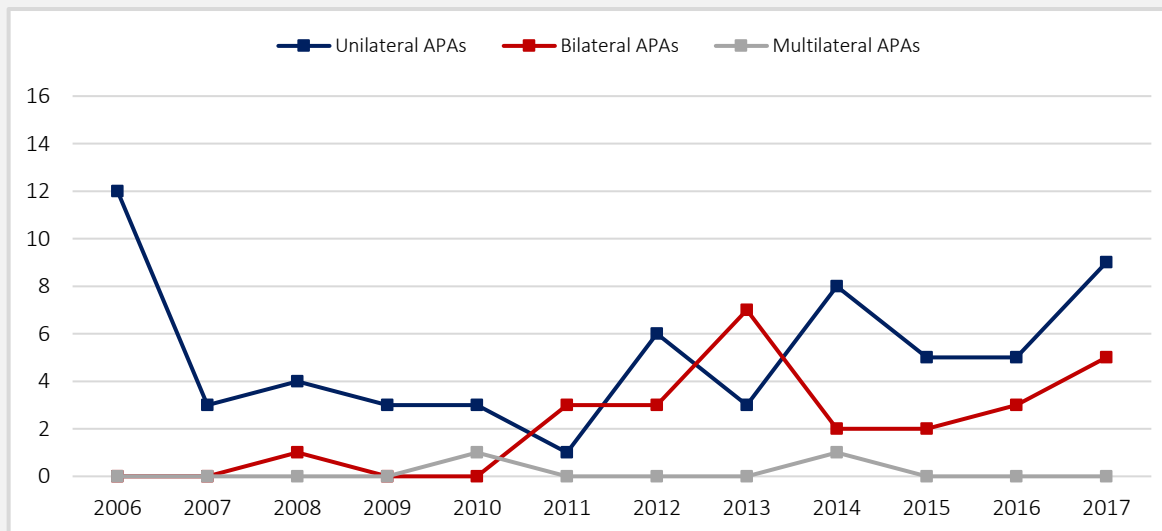
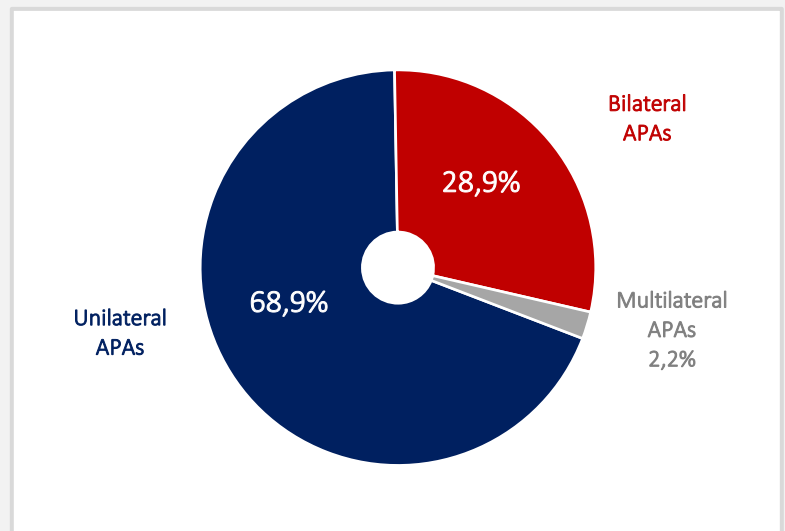
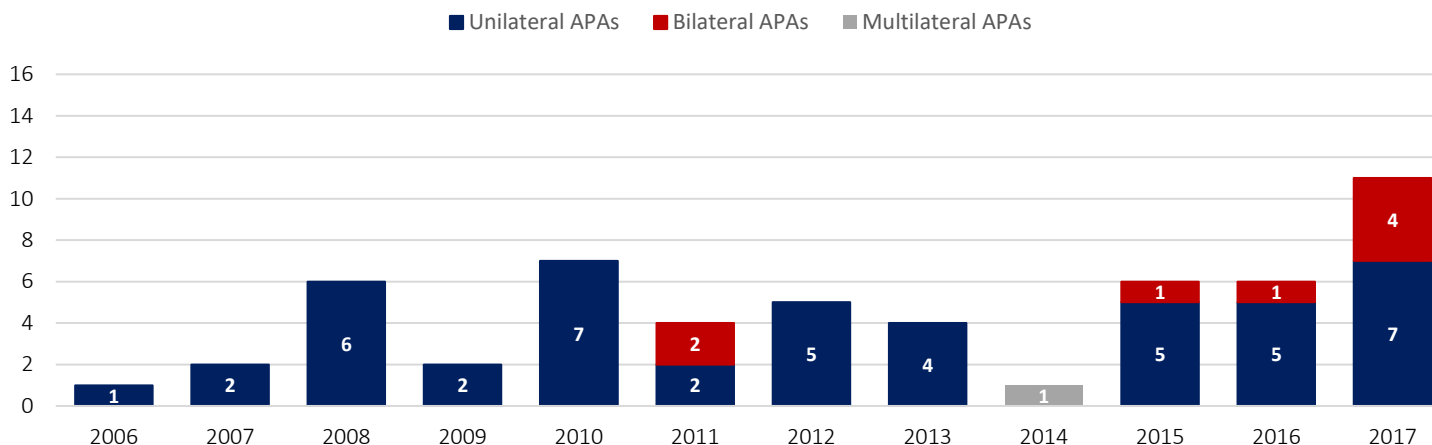


Chart 3. Applications submitted between 2006 and 2017



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Chart 4. Number of APAs issued from 2006 to 2017



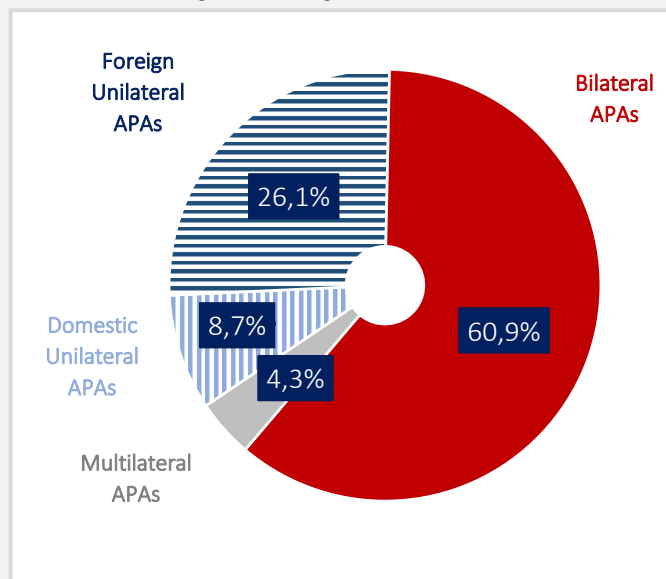
In 2006-2017, 55 proceedings were concluded with the issuance of an advance pricing agreement, meaning that 61% of the applications submitted during this period were finalized with the issuance of an APA. The following agreements were concluded [Chart 4]:

- 46 unilateral agreements (including 9 domestic and 37 foreign agreements),
- 8 bilateral agreements,
- 1 multilateral agreement.

13 decisions concerned the extension or renewal of an agreement (12 unilateral APAs and 1 bilateral APA). In 2011, the first two bilateral APAs negotiated by the Polish administration (with Switzerland and the United Kingdom) were concluded, and in 2014, the first multilateral APA involving four competent authorities was finalized.

At the beginning of 2018, 23 proceedings were pending – 8 for unilateral APAs, 14 for bilateral APAs, and 1 for a multilateral APA [Chart 5].

Chart 5. Pending proceedings on January 1, 2018



✓ **90**
APA applications submitted
from 2006 to 2017

✓ **55**
agreements concluded
between 2006 and 2017

✓ **12**
other final resolutions issued
from 2006 to 2017

(refusal to conclude an APA, discontinuance of proceedings, leaving the application without consideration, refusal to initiate proceedings)

✓ **23**
proceedings pending on
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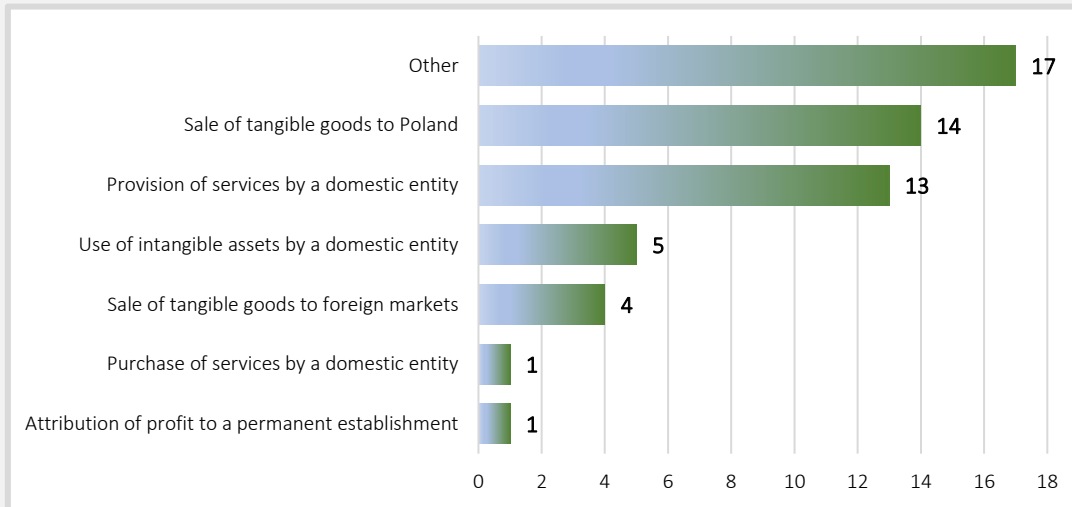
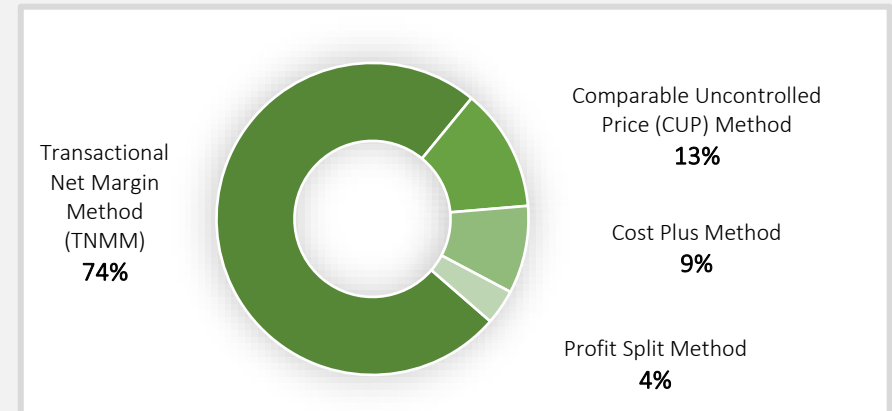


Chart 9. Methods applied in APAs issued from 2006 to 2017 (55 APAs)



The APAs issued between 2006 and 2017 primarily covered transactions involving the provision of services by domestic entities, the sale of tangible goods to Poland, and transactions classified as "other" (including contract manufacturing and complex transactions). APAs concerning these transaction categories accounted for 80% of the agreements concluded during this period [Chart 6, Chart 7, Chart 8].

The dominant method used was the Transactional Net Margin Method (TNMM), applied in nearly 75% of the issued decisions [Chart 9]. This was partly due to the types of transactions covered by the APAs (such as a limited number of transactions where both parties contributed unique and valuable inputs) and partly due to the structure and availability of the financial data required to apply the method.

In transactions where TNMM was used, the most frequently applied profitability indicators were the operating margin and the operating markup (each used in approximately 40% of the APAs with TNMM). The operating margin indicator was generally used for valuing distribution activities, and its results ranged from 1.2% to 10.4%. The operating markup for production activities ranged from 3.0% to 15.0%, while for service activities, it ranged from 1.3% to 9.3%. In other cases, indicators such as return on sales and return on assets were applied.*

* The presented ranges of results relate to various factual circumstances and industries in which the activities were conducted.

Chart 7. Types of transactions covered by unilateral APAs (46 APAs)

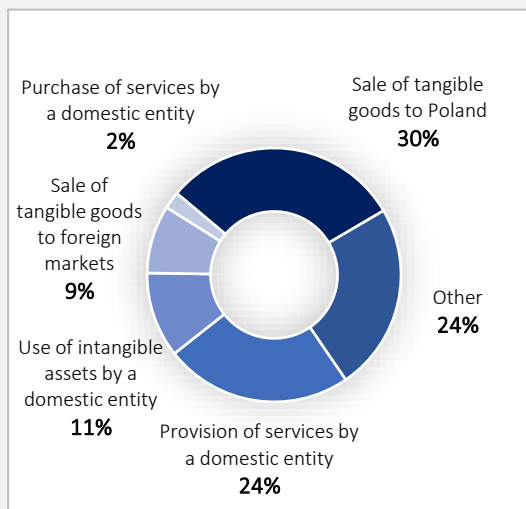
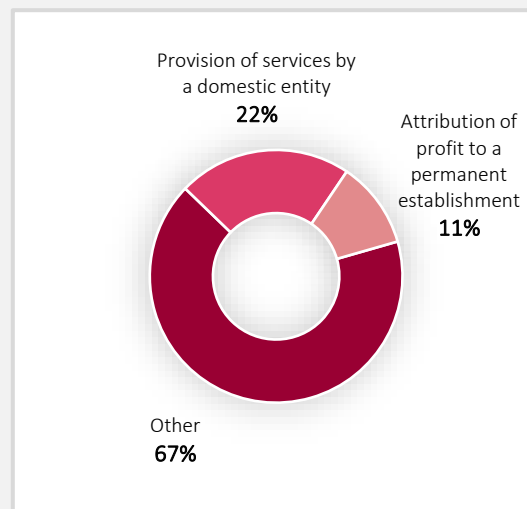


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Between 2018 and 2023, nearly 700* applications for APAs were submitted (including 46 for the renewal of agreements), with half of the applications filed in 2019. This was primarily a result of introducing the possibility to exclude transactions covered by APAs from the cost deduction limits set by Article 15e of the CIT Act [Chart 10]. In total, over 460 applications were submitted to the Head of the NRA due to this entitlement. Despite the above, there has been a noticeable increase in interest in APAs, which has continued after the repeal of Article 15e of the CIT Act [Chart 11]. On average, over 111 applications were submitted annually during the analyzed period, including 34 applications per year not motivated by the desire to exclude costs from the limits outlined in Article 15e of the CIT Act.

Unilateral APA applications accounted for nearly 90% of all applications submitted between 2018 and 2023. In this six-year period, the number of bilateral APA applications tripled compared to the twelve-year period of 2006-2017. Additionally, one multilateral APA application was submitted in 2018 [Chart 12, Chart 13].

By the end of 2023, all remaining 23 applications submitted in 2006-2017, as well as nearly 60% of the applications submitted in 2018-2023, had been processed (either through the issuance of an APA or by other resolution concluding the proceedings).

* 668 applications as of September 3, 2024. The final number may increase due to further determinations regarding the homogeneity of transactions covered by certain applications.

Chart 10. Applications submitted from 2018 to 2023 by year

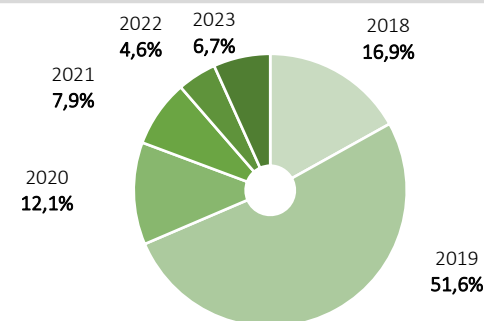


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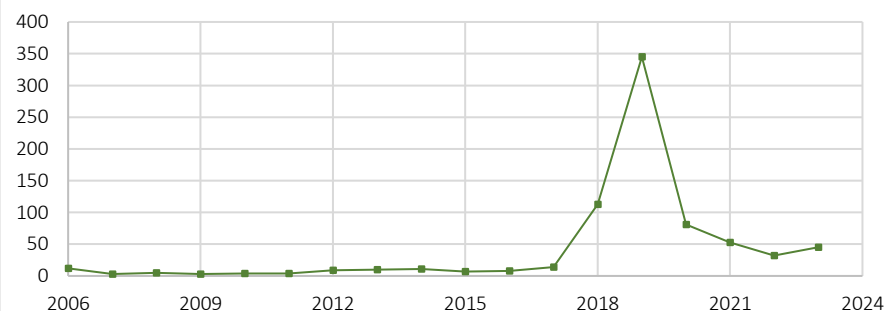


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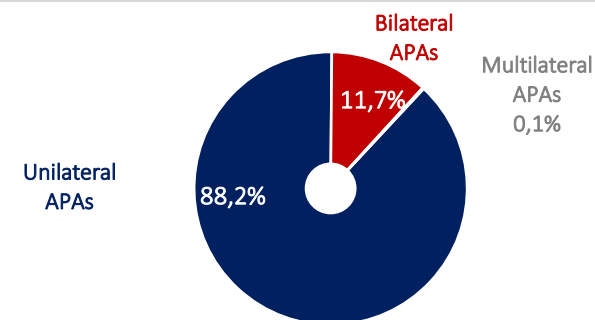
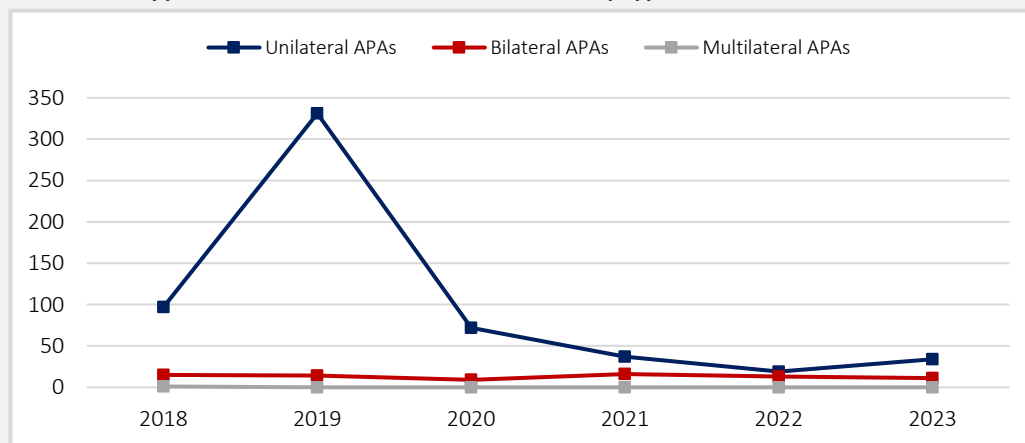
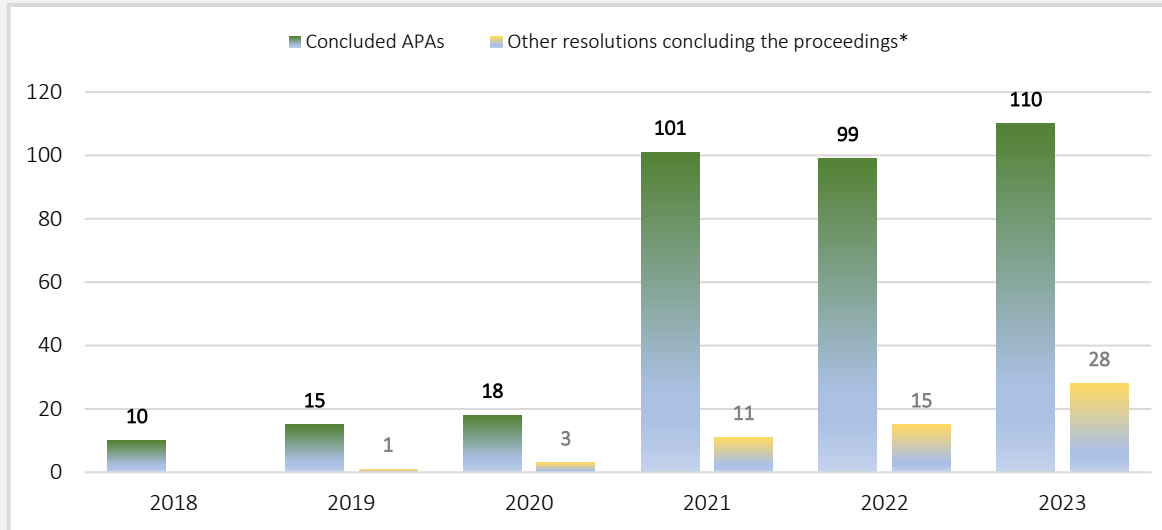


Chart 12. Applications submitted from 2018 to 2023 by type of APA



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Chart 14. Number of resolutions concluding APA proceedings



Between 2018 and 2023, the Head of the NRA issued over 350 advance pricing agreements (including 27 renewal decisions) and nearly 60 other resolutions* concluding APA proceedings. In total, 411 proceedings initiated by applications for APAs were completed over the six-year period [Chart 14].

Unilateral APAs accounted for 90% of the agreements issued (319 out of 353 agreements concluded during this period), with foreign unilateral APAs forming the majority (275). In 2019, the only multilateral APA in the analyzed period (the second since the introduction of APAs in Poland) was concluded, involving five tax administrations [Charts 15, Charts 16].

*refusals to conclude an APA, discontinuance of proceedings, leaving the application without consideration, refusal to initiate proceedings

Chart 15. Number of APAs issued from 2006 to 2017 by type

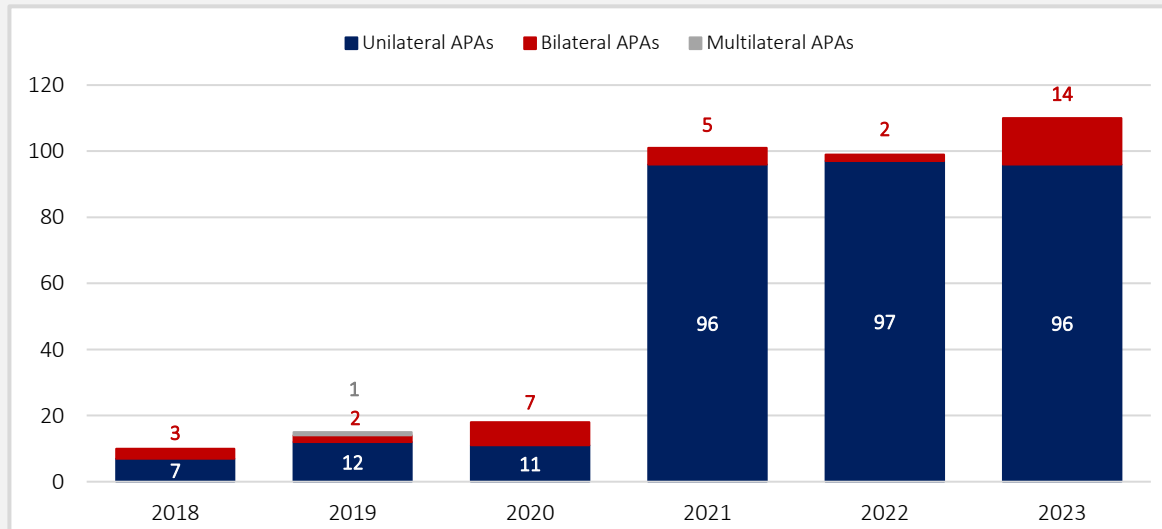
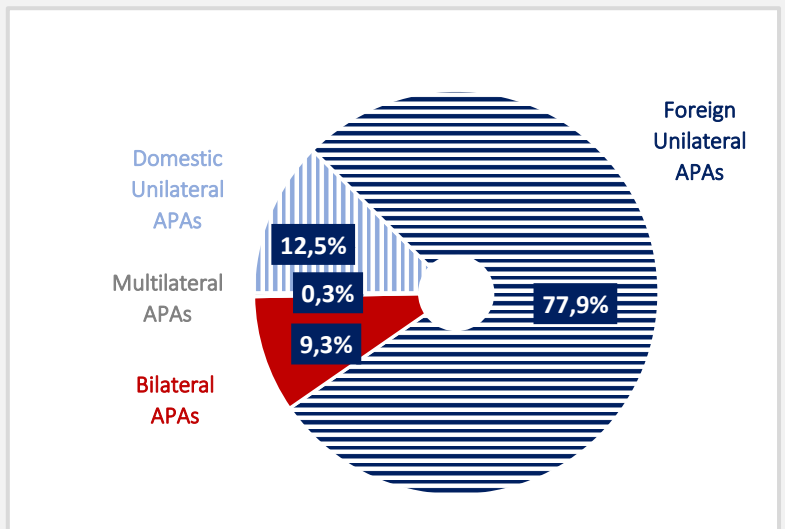


Chart 16. APAs concluded between 2018 and 2023 by type



Agreements concluded between 2018 and 2023 (2)

Chart 17. APAs issued related and unrelated to Article 15e of the CIT Act

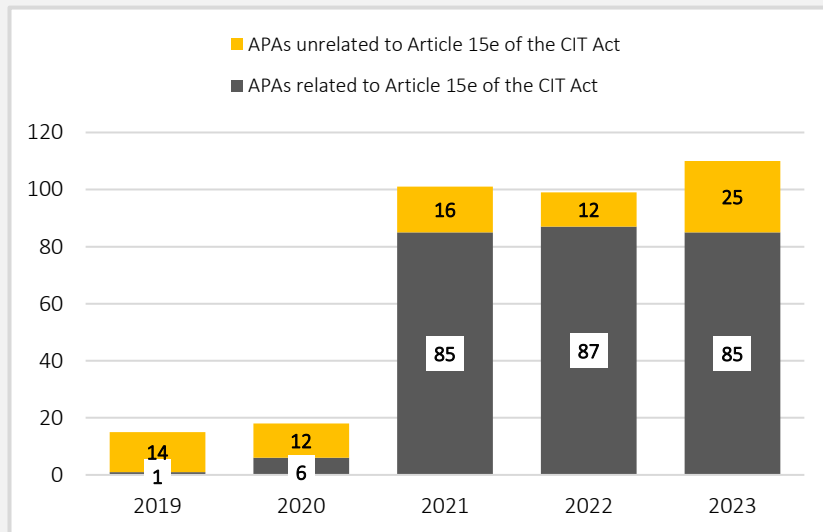
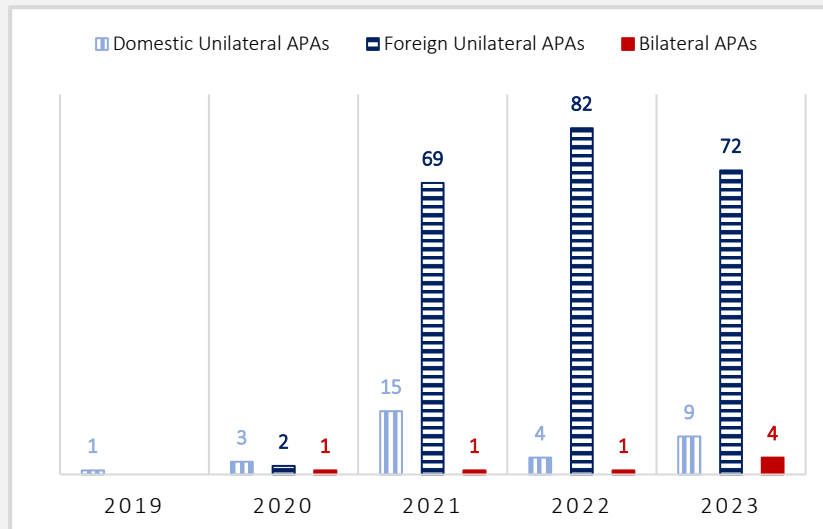


Chart 18. APAs issued related to Article 15e of the CIT Act by type



During the analyzed period, APAs played a significant role in relation to the regulations limiting the deductibility of certain costs for tax purposes, which have been in effect since the beginning of 2018¹ (Article 15e of the CIT Act). According to the legislator, expenses for the specified services and intangible assets were often used to artificially inflate tax-deductible costs, partly due to difficulties in determining their market value and the merely formal transfer of such costs to other entities². As a result, Article 15e of the CIT Act imposed limits on the expenses incurred, directly or indirectly, for related parties that could be deducted as tax costs, based on specified categories. However, these limitation did not apply to the costs of services, fees, and charges where the APA covered the correctness of the calculation of remuneration for such services, fees, and charges during the period covered by the APA (Article 15e(15)(1) of the CIT Act, as amended by the DRM Act). Furthermore, according to Article 124 of the DRM Act, for APA applications submitted by December 31, 2019, Article 15e(15) of the CIT Act also applied to the fiscal year preceding the year in which the application was submitted.

In relation to this regulation, between 2019 and 2023, the Head of the NRA issued:

- 264 APAs, accounting for 75% of all agreements concluded during the period [Chart 17],
- 44 other resolutions concluding APA proceedings³.

Foreign unilateral APAs dominated (225 in total), primarily involving the purchase of services by a domestic entity. Similarly, domestic unilateral APAs issued in relation to this regulation (32 in total) mainly concerned the purchase of services by a domestic entity. The bilateral APAs issued in relation to Article 15e of the CIT Act (7 in total) primarily dealt with the use of intangibles by a domestic entity [Chart 18, Chart 20].

Article 15e of the CIT Act ceased to be in force at the end of 2021. At the same time, if the following conditions are met:

- the APA concerns the purchase of intragroup services,
- the APA excludes the application of the limitations set out in Article 15e of the CIT Act,
- the period covered by the APA starts between January 1, 2018, and December 31, 2021

such APAs cannot be renewed⁴. However, some taxpayers, after the validity period of the issued decision has expired, choose to apply for a new APA regarding transactions that were initially covered by an agreement in relation to Article 15e of the CIT Act.

¹ Act of October 27, 2017, amending the Personal Income Tax Act, the Corporate Income Tax Act, and the Lump-Sum Income Tax Act on Certain Revenues Earned by Individuals (Journal of Laws of 2017, item 2175, as amended).

² Explanatory memorandum to the draft law amending the Personal Income Tax Act, the Corporate Income Tax Act, and the Lump-Sum Income Tax Act on Certain Revenues Earned by Individuals, Sejm of the 8th term, printed matter no. 1878, p. 29.

³ Refusal to conclude an APA, discontinuation of proceedings, leaving the application unprocessed, refusal to initiate proceedings.

⁴ Article 60(2) of the Act of October 29, 2021, amending the Personal Income Tax Act, the Corporate Income Tax Act, and certain other acts (Journal of Laws of 2021, item 2105, as amended).

Agreements concluded between 2018 and 2023 (3)

Chart 19. Types of transactions covered by issued APAs (353 APAs)

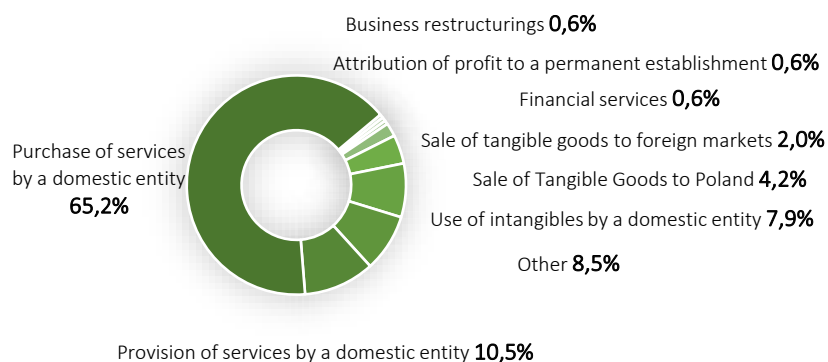


Chart 20. Transactions – APAs related to Art. 15e of the CIT Act (264 APAs)

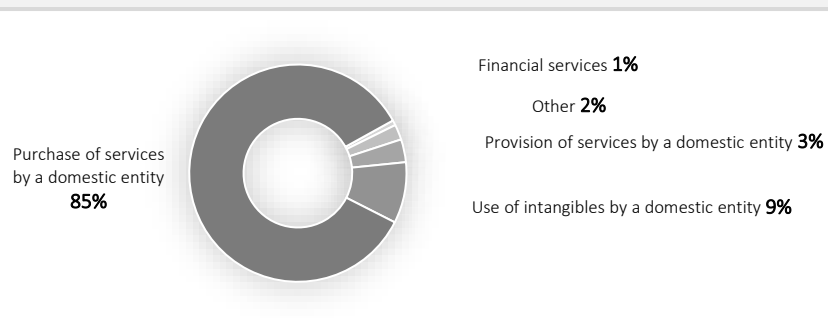


Chart 21. Transactions – APAs unrelated to Art. 15e of the CIT Act (89 APAs)

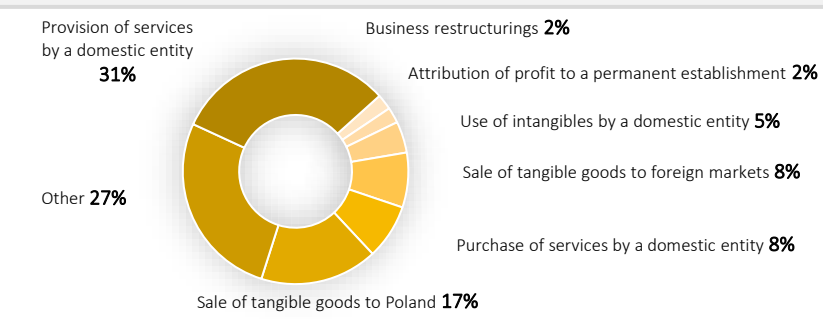
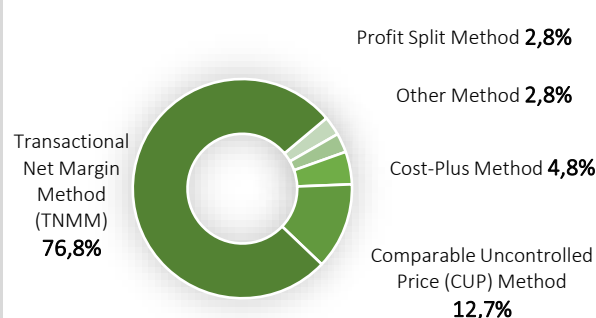


Chart 22. Applied method (353 APAs)



The advance pricing agreements issued between 2018 and 2023, which were not motivated by the desire to exclude transaction costs from the limitations under Article 15e of the CIT Act, primarily covered transactions involving the provision of services by domestic entities, the sale of tangible goods to Poland, and transactions classified as "other" (this pattern was similar to the APAs issued in the previous period). APAs covering these categories of transactions accounted for 75% of the agreements unrelated to Article 15e of the CIT Act and nearly 19% of all APAs issued between 2018 and 2023 [Chart 19, Chart 21].

The most frequently applied method, just as in the previous period, was the Transactional Net Margin Method (TNMM), used in over 70% of the decisions [Chart 22].

Further details regarding the types of transactions, methods, and indicators are provided in the later sections of the report.

✓ **411**
proceedings finalized between
2018 and 2023

including:

✓ **353**

agreements concluded
from 2018 to 2023:

✓ **319**

unilateral APAs:

- 44 domestic
- 275 foreign

✓ **33**

bilateral APAs

✓ **1**

multilateral APA

UNILATERAL APAs 2018 – 2023

Types of Transactions (1)

Chart 23. Types of transactions covered by issued domestic unilateral APAs (44 APAs)

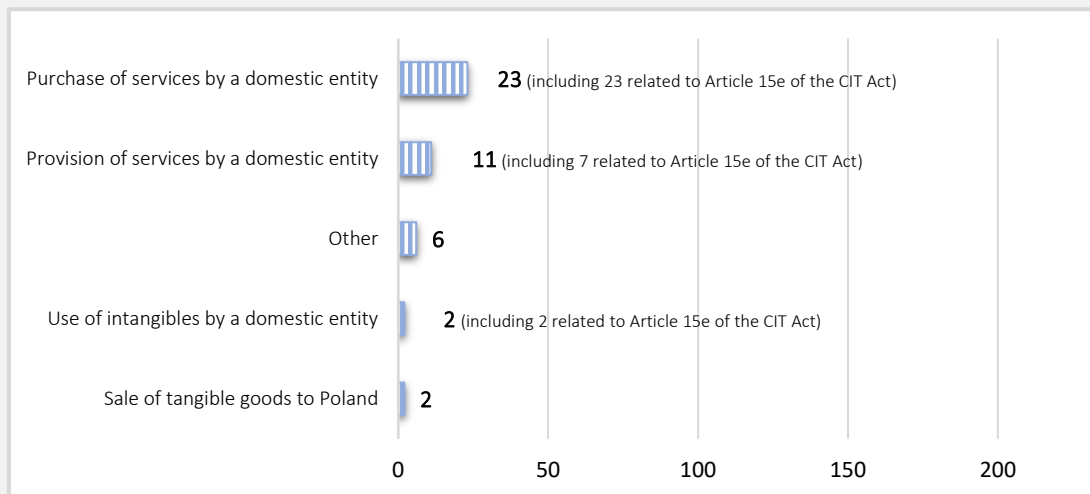
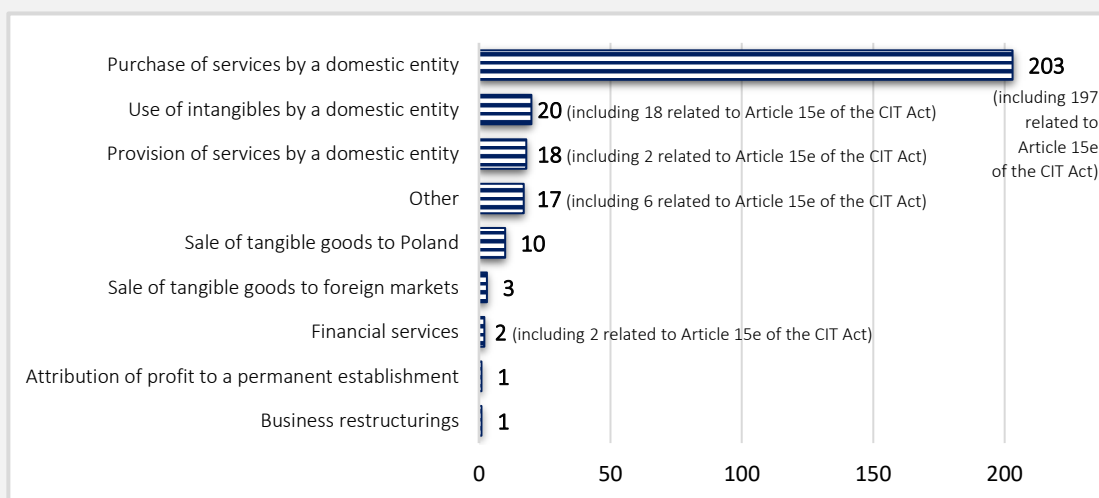


Chart 24. Types of transactions covered by issued foreign unilateral APAs (275 APAs)



Between 2018 and 2023, 319 unilateral APAs were issued, including 44 domestic unilateral APAs and 275 foreign unilateral APAs. In connection with Article 15e of the CIT Act, 32 out of 44 domestic unilateral APAs (73%) and 225 out of 275 foreign unilateral APAs (82%) were concluded, resulting in a total of 257 unilateral APAs motivated by the desire to avoid the cost limitation under Article 15e of the CIT Act (81% of all unilateral APAs issued during the analyzed period).

Both domestic and foreign unilateral APAs most commonly involved the purchase of services by a domestic entity (52% and 74% of the respective types of APAs). In the case of domestic unilateral APAs, all agreements related to this type of transaction were issued in connection with Article 15e of the CIT Act. Among the remaining domestic unilateral APAs (not related to Article 15e), the majority covered transactions classified as "other" (6 APAs, mainly joint ventures between related parties) and the provision of services by domestic entities (4 APAs) [Chart 23].

For foreign unilateral APAs, 97% of those involving the purchase of services by a domestic entity were issued in connection with Article 15e of the CIT Act. Among the remaining foreign unilateral APAs, the majority involved transactions related to the provision of services by a domestic entity (16 APAs), transactions classified as "other" (11 APAs, primarily contract manufacturing and complex transactions, including additional remuneration for restructuring), and the sale of tangible goods to Poland (10 APAs) [Chart 24].

A detailed breakdown of unilateral APAs issued in each year, according to transaction type, is presented on the next page of the report [Charts 25-30]. Information on the number of domestic and foreign unilateral APAs concluded in each year in relation to Article 15e of the CIT Act is provided on page 16 of the report [Chart 18]. The dominant types of transactions covered by the issued APAs are a natural consequence of the provisions of Article 15e of the CIT Act and the increasing number of proceedings finalized under this regulation in subsequent years.

UNILATERAL APAs 2018 – 2023

Types of Transactions (2)

Chart 25. Types of transactions covered by unilateral APAs issued in 2018 (7 APAs)

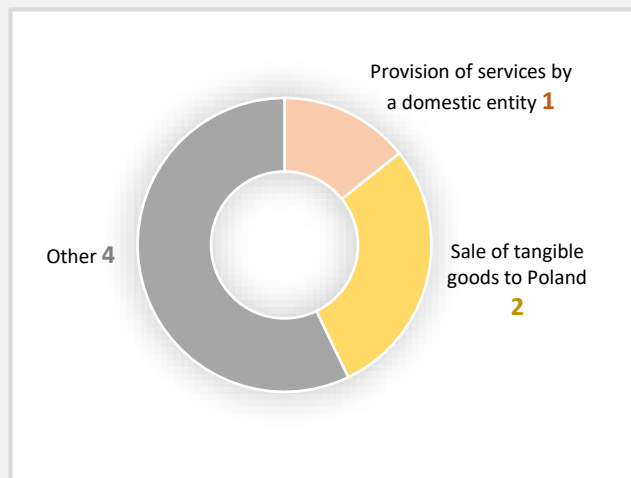


Chart 26. Types of transactions covered by unilateral APAs issued in 2019 (12 APAs)

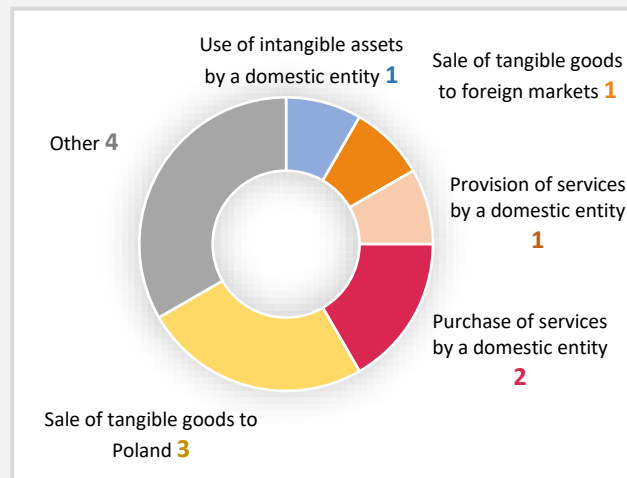


Chart 27. Types of transactions covered by unilateral APAs issued in 2020 (11 APAs)

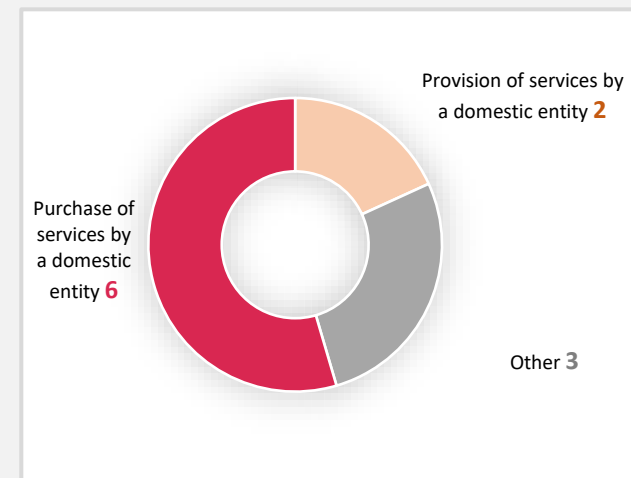


Chart 28. Types of transactions covered by unilateral APAs issued in 2021 (96 APAs)

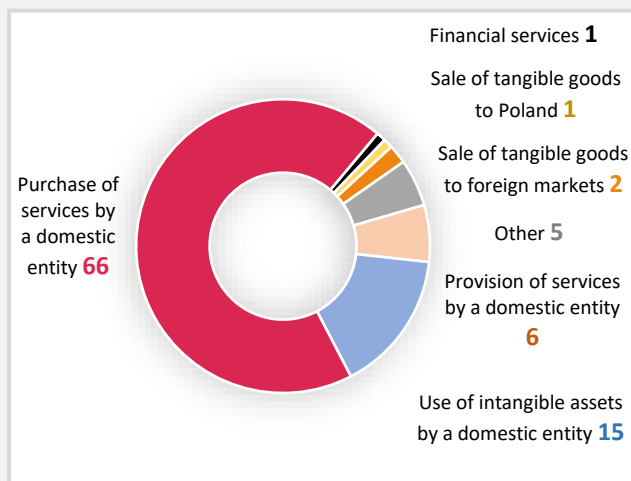


Chart 29. Types of transactions covered by unilateral APAs issued in 2022 (97 APAs)

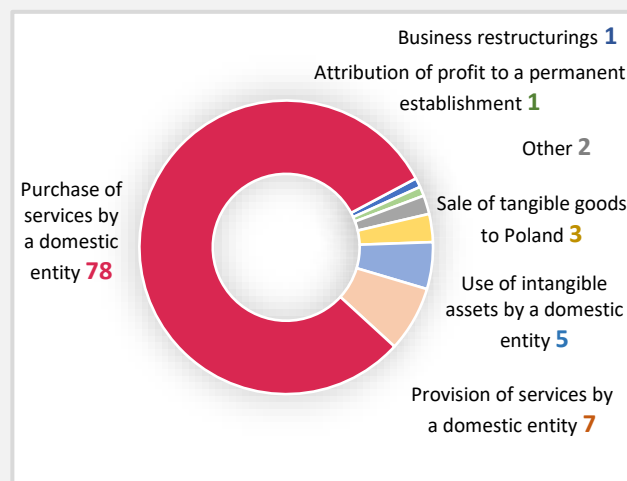
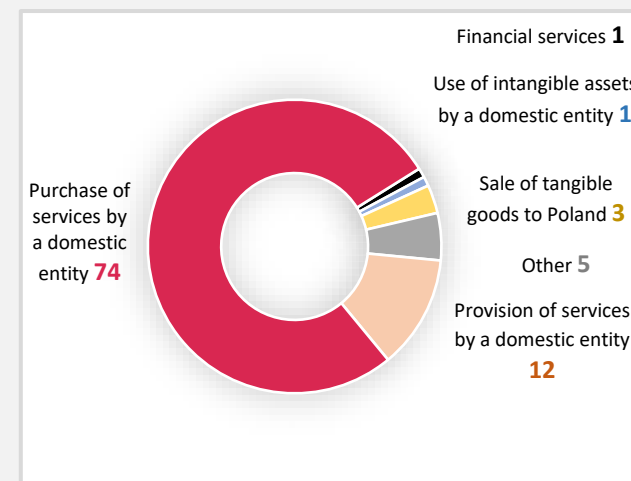


Chart 30. Types of transactions covered by unilateral APAs issued in 2023 (96 APAs)



UNILATERAL APAs 2018 – 2023

Methods Applied

Chart 31. Methods applied in unilateral APAs issued from 2018 to 2023 (319 APAs)

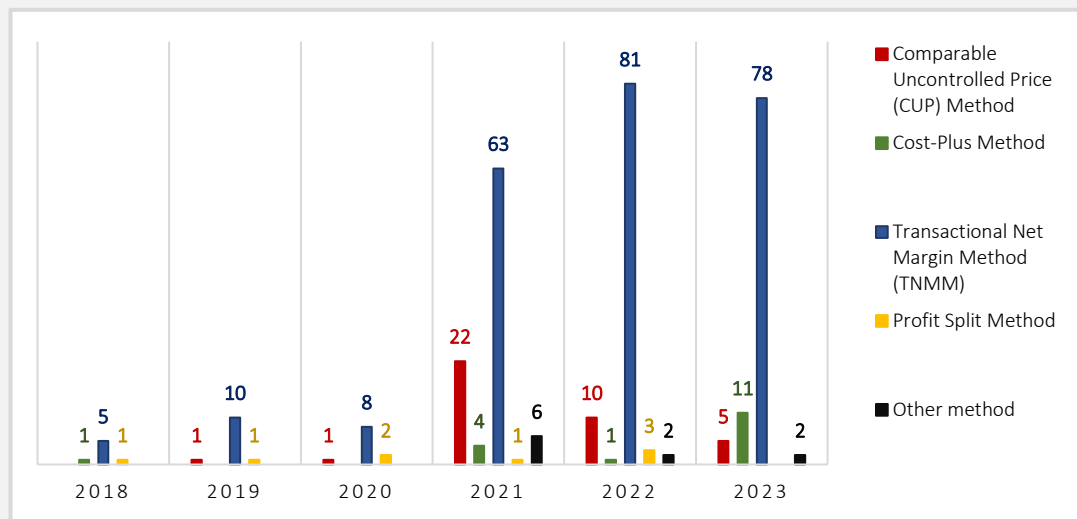


Chart 32. Methods applied in domestic unilateral APAs (44 APAs)

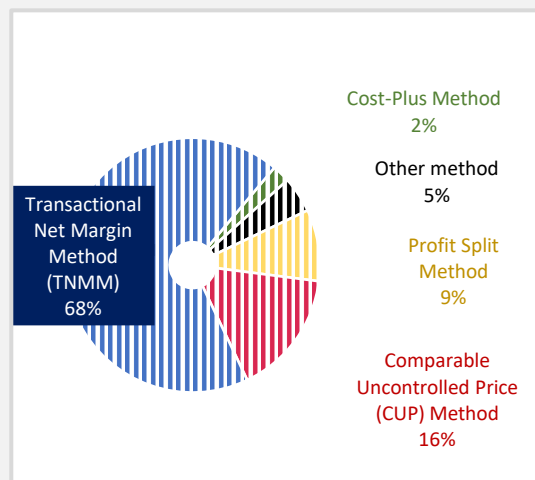


Chart 33. Methods applied in foreign unilateral APAs (275 APAs)

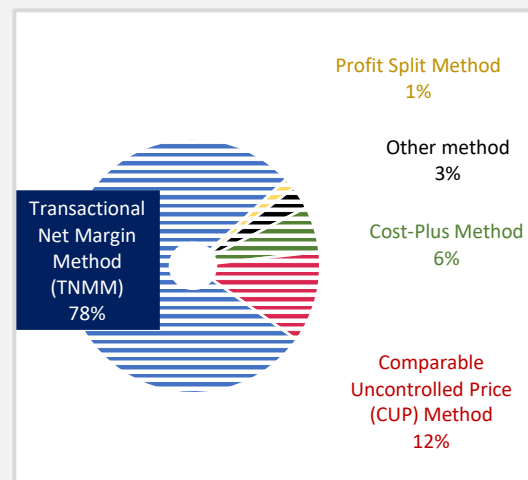
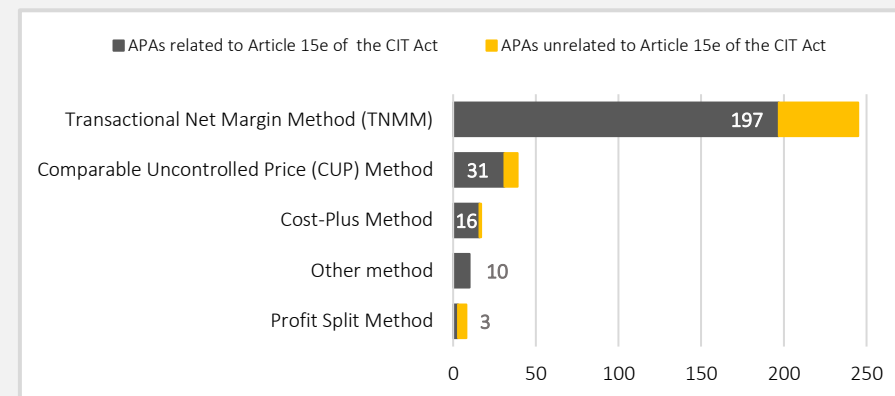


Chart 34. Methods applied in unilateral APAs issued between 2018 and 2023 in connection with Article 15e of the CIT Act (257 out of 319 APAs)



The most frequently used method in both domestic and foreign unilateral APAs was the Transactional Net Margin Method (TNMM), applied in 68% and 78% of the decisions issued, respectively [Chart 32, Chart 33]. This is a result of, on the one hand, the types of transactions covered by the APAs (e.g., a small number of transactions where both parties contributed unique and valuable inputs) and, on the other hand, the structure and requirements regarding the availability of financial data necessary for applying the method.

In transactions where TNMM was used, the most commonly applied profitability indicator was the operating markup (approximately 86% of APAs using TNMM). In the vast majority of cases, it concerned service activities (with around 60% of service transactions confirming that a 5% markup on the cost base reflected the arm's length price). Of the APAs where the operating markup was applied, only about 7% concerned production activities. In such cases, the indicator's value ranged from 1.2% to 16.7%. The operating margin indicator (applied in around 9% of APAs using TNMM) was generally used to value distribution activities. The range of this indicator's values in all cases where it was used (not only in distribution-related cases) was between 1.0% and 6.5%. Other profitability indicators (e.g., return on sales, return on assets) were applied in around 5% of the APAs where TNMM was used.

* The presented ranges of results relate to various factual circumstances and industries in which the activities were conducted.

BILATERAL APAs 2018 – 2023

Foreign Tax Administrations

Chart 35. Bilateral agreements concluded between 2018 and 2023

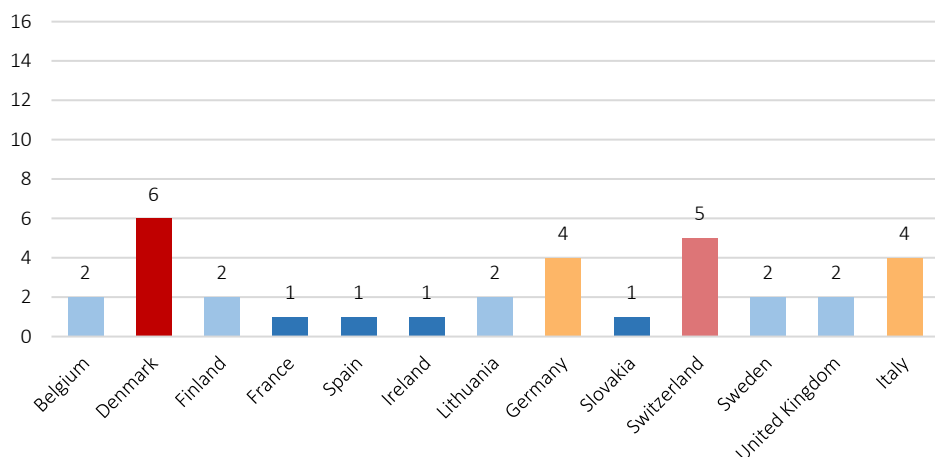
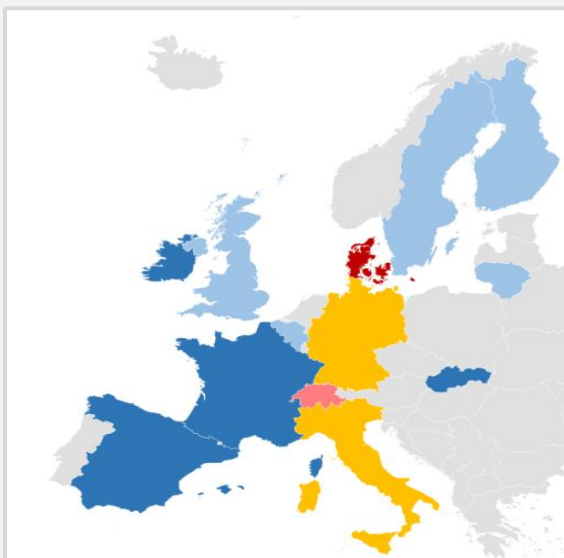
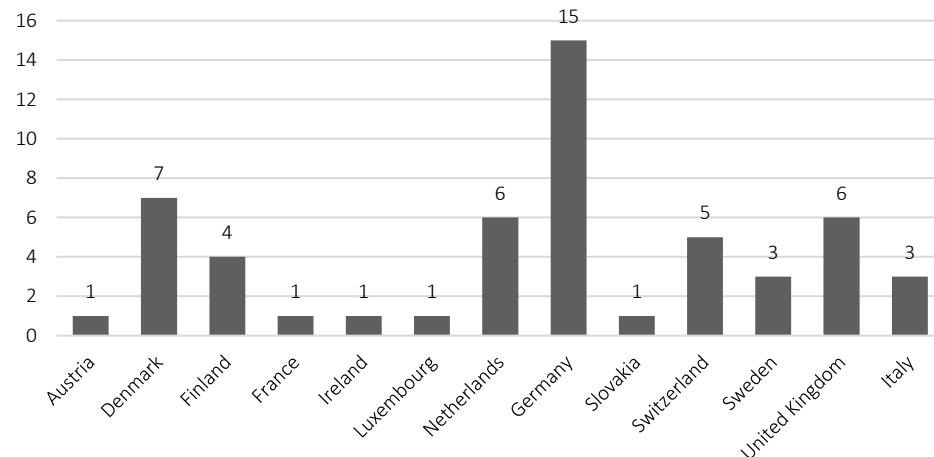


Chart 36. Bilateral agreements pending on January 1, 2024



Between 2018 and 2023, 33 bilateral APAs and 1 multilateral APA were issued. All agreements were negotiated with the competent authorities (CAs) of European countries, primarily within the European Union. The Polish administration most frequently applied the mutual agreement procedure based on double taxation agreements with Denmark, Switzerland, Germany, and Italy [Chart 35]. On January 1, 2024, 54 bilateral APA proceedings were ongoing, primarily involving the CAs of Germany (28%), Denmark (13%), the Netherlands, and the United Kingdom (11%) [Chart 36]. Additionally, one multilateral APA proceeding was ongoing.

Bilateral and multilateral APAs require reaching agreements with the relevant tax authorities of foreign related entities. These agreements, in addition to offering protection against challenges to transfer pricing, also help mitigate the risk of double taxation. The OECD TP Guidelines recommend negotiating agreements involving the tax authorities of other countries. Polish regulations do not impose preferences or restrictions in this area, allowing taxpayers the flexibility to choose the level of security and assurance they seek. Taxpayers interested in obtaining an APA should be aware that the number of tax jurisdictions involved in the agreement impacts the time required to process the application. The working methods of the relevant tax administrations, their readiness to engage in negotiations, and their capacity to organize frequent negotiation meetings are also key factors. Bilateral and multilateral proceedings therefore typically concern high-tax-risk transactions due to their large value and complexity (e.g., valuation of the entire business activity of an entity, business restructurings, and transactions where the profit split method is considered appropriate).

BILATERAL and MULTILATERAL APAs 2018 – 2023

Types of Transactions (1)

Chart 37. Types of transactions covered by bilateral and multilateral APAs (34 APAs)



Between 2018 and 2023, 33 bilateral APAs were concluded, 7 of which (21%) were related to Article 15e of the CIT Act. Bilateral APAs aimed at excluding transaction costs from the limits set by Article 15e mainly involved transactions where domestic entities used intangible assets (such as purchasing licenses or paying franchise fees), as well as the purchase of services by domestic entities. Among the remaining 26 bilateral APAs, the agreements primarily covered transactions involving the provision of services by domestic entities (8 APAs) and those classified as "other" (7 APAs, mainly contract manufacturing and distribution) [Chart 37].

From 2006 to 2017, 28 applications for bilateral or multilateral APAs were submitted. In the analyzed six-year period, 79 similar applications were filed, indicating a growing importance of bilateral and multilateral procedures. The OECD emphasizes the significance of agreements involving more than one jurisdiction, as they offer greater legal certainty by eliminating double taxation. A potential drawback of unilateral APAs concerning foreign entities is the lack of assurance that agreements with the Polish tax authority will be recognized by the tax administration of the foreign entity's jurisdiction. It is expected that interest in bilateral and multilateral agreements will continue to grow [Chart 38, Chart 39].

A detailed breakdown of bilateral APAs issued by transaction type in each year is presented on the following page of the report [Charts 40-45].

Chart 38. Applications for bilateral and multilateral APAs submitted from 2006 to 2023

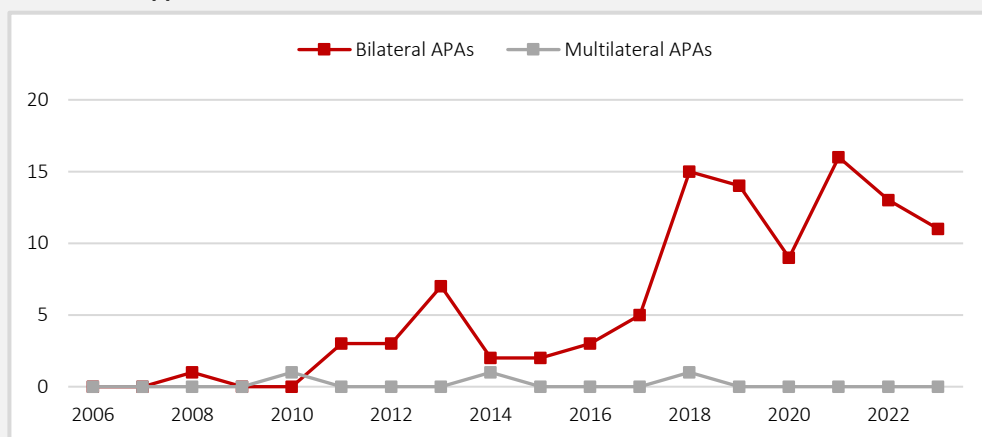
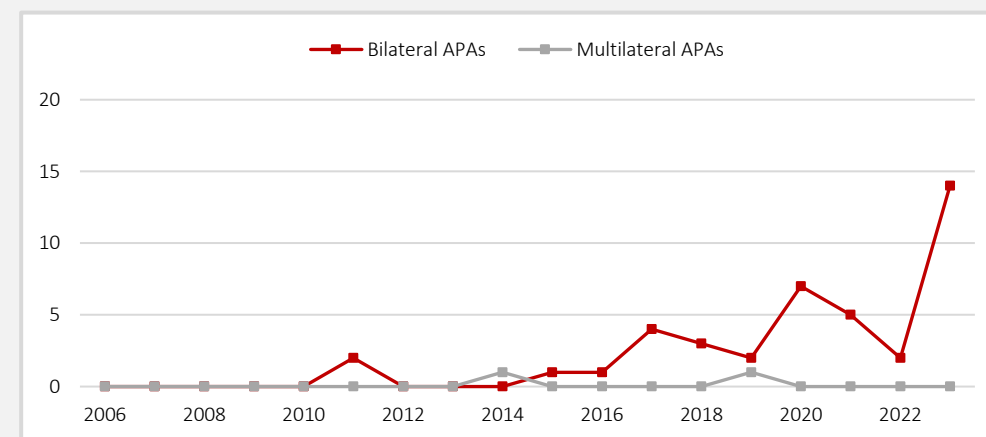


Chart 39. Bilateral and multilateral APAs issued from 2006 to 2023



BILATERAL and MULTILATERAL APAs 2018 – 2023

Types of Transactions (2)

Chart 40. Types of transactions covered by bilateral APAs issued in 2018 (3 APAs)



Chart 41. Types of transactions covered by bilateral and multilateral APAs issued in 2019 (3 APAs)

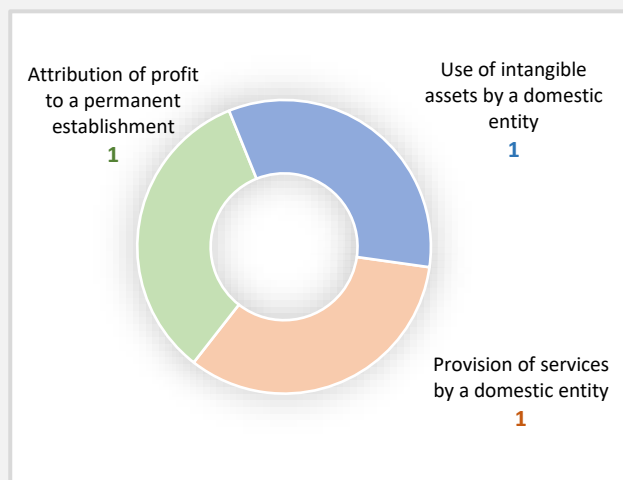


Chart 42. Types of transactions covered by bilateral APAs issued in 2020 (7 APAs)

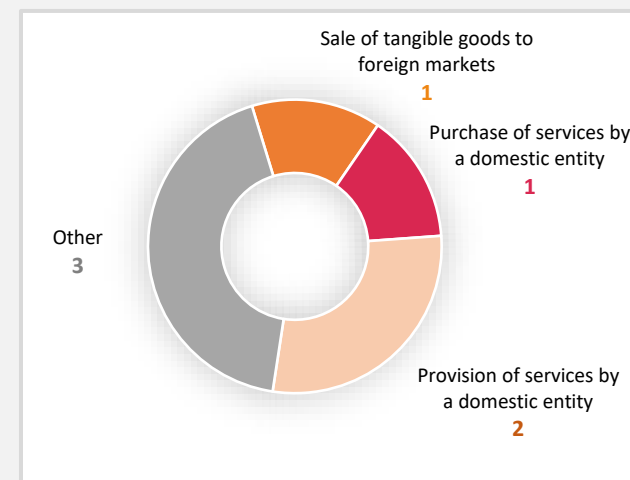


Chart 43. Types of transactions covered by bilateral APAs issued in 2021 (5 APAs)

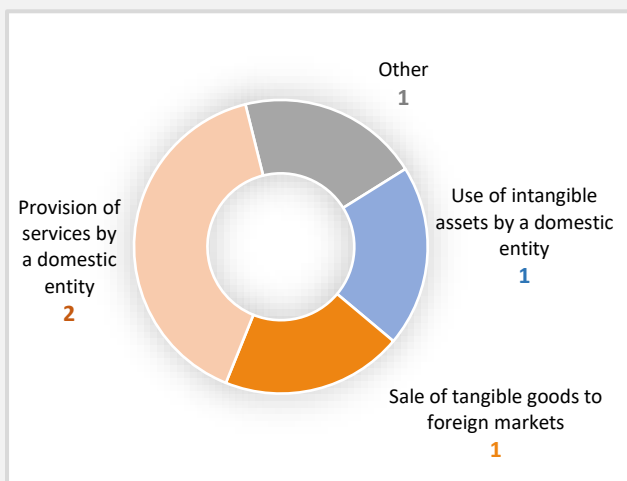


Chart 44. Types of transactions covered by bilateral APAs issued in 2022 (2 APAs)

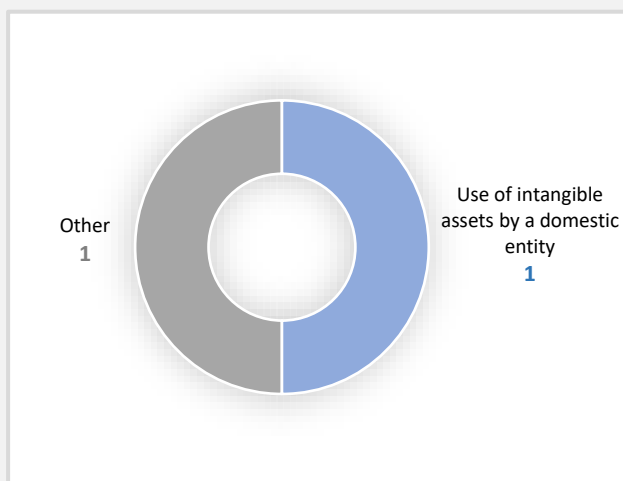
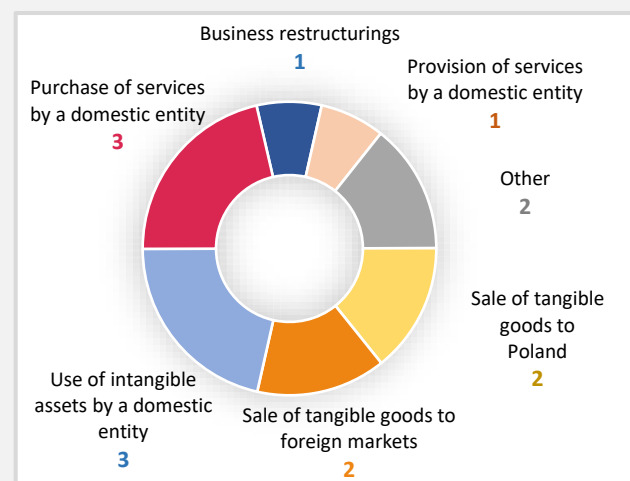


Chart 45. Types of transactions covered by bilateral APAs issued in 2023 (14 APAs)



BILATERAL and MULTILATERAL APAs 2018 – 2023

Methods Applied

Chart 46. Methods applied in bilateral and multilateral APAs issued from 2018 to 2023 (34 APAs)

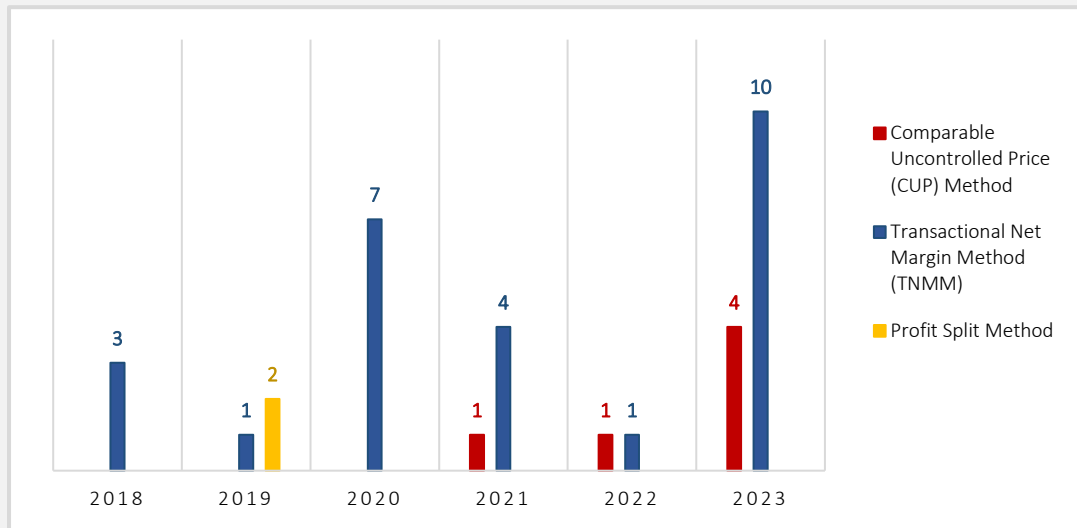


Chart 47. Methods applied in bilateral APAs issued between 2018 and 2023 in connection with Article 15e of the CIT Act (7 out of 34 APAs)

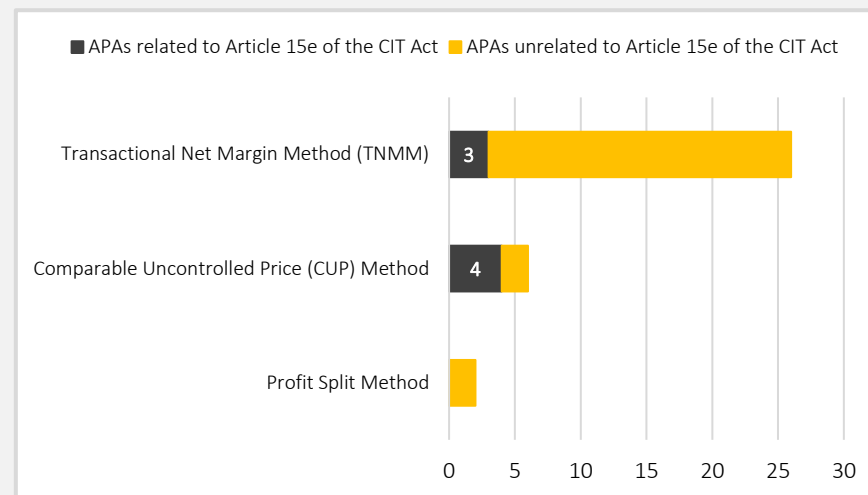
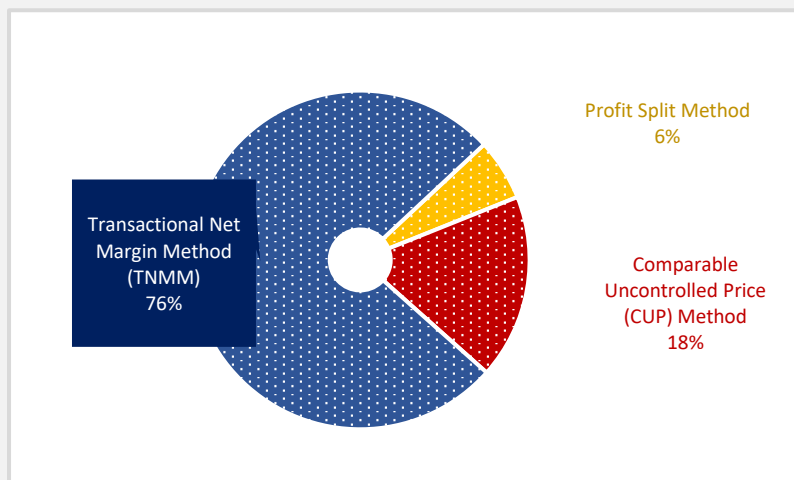


Chart 48. Methods applied in bilateral and multilateral APAs (34 APAs)



The most commonly used method in bilateral APAs, similar to unilateral APAs, was the Transactional Net Margin Method (TNMM), applied in 76% of the bilateral APAs issued [Chart 48]. The use of a specific method in individual years corresponds to the types of transactions covered by the bilateral APAs issued so far, as well as the requirements regarding the availability of financial data necessary to apply the method [Chart 46, Chart 47].

In transactions where TNMM was used, the most frequently applied profitability indicator was the operating markup (50% of APAs using TNMM). This indicator was used for the valuation of production activities (in this case, the results ranged from 2.0% to 15.0%) and service activities (3.0% to 15.0%). The operating margin indicator was generally used for valuing distribution activities, where the results typically ranged from 1.5% to 5.7% (the operating margin was applied in nearly 25% of APAs using TNMM). Other profitability indicators included, in particular, return on sales and return on assets.*

* The presented ranges of results relate to various factual circumstances and industries in which the activities were conducted.

Proceedings pending on January 1, 2024

Chart 49. Pending proceedings on January 1, 2024

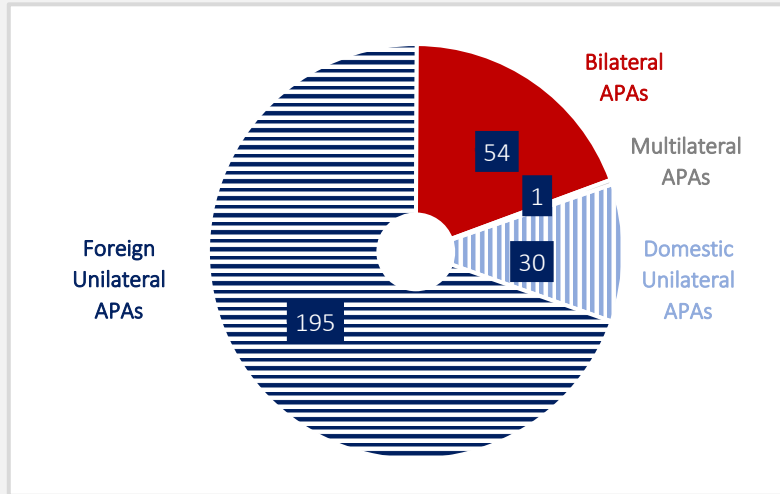
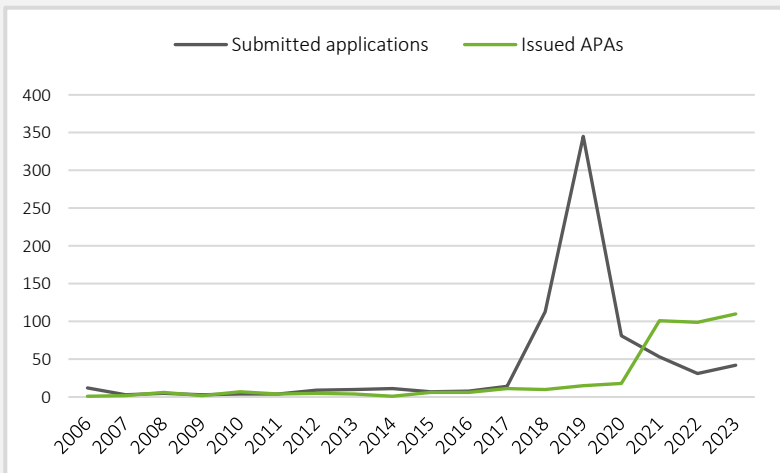


Chart 50. Applications submitted and APAs issued* in 2006–2023



*excluding 70 other final resolution concluding the proceedings (refusal to conclude an APA, discontinuance of proceedings, leaving the application without consideration, refusal to initiate proceedings).

At the beginning of 2024, 280 proceedings were ongoing – 225 for unilateral APAs, 54 for bilateral APAs, and 1 for a multilateral APA [Chart 49], including 21 proceedings for APA renewals. In total, over 60 applications for the extension or renewal of APAs were submitted to the Minister of Finance / Head of the NRA between 2006 and 2023 (75% of these applications were filed after 2018). This confirms the growing importance of APAs as a guarantee tool for recurring transactions. It's also worth noting that extending an APA to cover subsequent periods comes with a reduced fee, amounting to half the standard fee for a new application.

Nearly 60% of the ongoing proceedings on January 1, 2024, involved applications submitted due to the applicability of Article 15e of the CIT Act, with 98% of them concerning unilateral APAs. It's important to highlight that proceedings initiated under Article 15e(15)(1) of the CIT Act are conducted in the same manner as any other proceedings (those not driven by this provision but rather by the desire to mitigate transfer pricing risks). This includes the clarification and verification of all relevant issues, as well as the organization of conciliation meetings (there is no simplified procedure).

During the period under review, the Head of the NRA also considered applications for the amendment or revocation of APAs and issued determinations assessing whether changes presented by the recipients of already issued APAs were significant and impacted the agreements. Additionally, several hundred pre-filing meetings were held.

Taking into account the entire eighteen-year period of APA availability in Poland [Chart 50], regardless of the influence of Article 15e of the CIT Act, which was a key (but not the only) driver of applications submitted, especially between 2018 and 2020, there has been a significant increase since 2018 in the role and use of APAs by taxpayers for managing tax risks and preventing disputes with tax authorities.

Between 2006 and 2023:

- ✓ over **750** APA applications were submitted
- ✓ **478** proceedings were concluded, including **408** through the conclusion of agreements:
 - ✓ **365** through the issuance of unilateral APAs:
 - 53 domestic
 - 312 foreign
 - ✓ **41** through the issuance of bilateral APAs
 - ✓ **2** through the issuance of multilateral APAs
- ✓ On January 1, 2024, **280** proceedings remained ongoing

Part 3: Additional Information

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Types of Advance Pricing Agreements

	Unilateral APA	Bilateral APA	Multilateral APA
Legal Basis	Article 86 of the DRM Act	Article 87 of the DRM Act and the provisions of relevant double taxation agreements that govern the mutual agreement procedure (equivalent to Article 25 of the OECD Model Tax Convention)	
Key Aspects	<ul style="list-style-type: none">– Limits risk in relation to transactions between domestic entities or between domestic and foreign entities when the domestic related entity has not submitted an application for an agreement with the competent authority– Does not guarantee the avoidance of double taxation in transactions with foreign related entities	<ul style="list-style-type: none">– Limits risk in relation to transactions between domestic and foreign entities– Eliminates the risk of double taxation	<ul style="list-style-type: none">– Limits risk in relation to transactions between related entities from three or more jurisdictions– Eliminates the risk of double taxation
Instructional Timeframe for Closing of Proceedings (Article 97 of the DRM Act)	Without undue delay but no later than within 6 months from the date of initiation of proceedings	Without undue delay but no later than within 12 months from the date of initiation of proceedings	Without undue delay but no later than within 18 months from the date of initiation of proceedings
Application Fee (Article 98 of the DRM Act)	1% of the value of the controlled transaction subject to the APA, with:		
	<ul style="list-style-type: none">– No less than 5,000 PLN and no more than 50,000 PLN for domestic unilateral APA– No less than 20,000 PLN and no more than 100,000 PLN for foreign unilateral APA	<ul style="list-style-type: none">– No less than 50,000 PLN and no more than 200,000 PLN	
	<ul style="list-style-type: none">• <u>The fee for renewal of an APA is equal to half of the fee determined in the manner described above.</u>• The value of the controlled transaction is determined for the period covered by the APA application.• To determine the value of the controlled transaction, the provisions of Article 23x(1) of the PIT Act or Article 11l of the CIT Act are applied accordingly.• If a single APA application includes separate controlled transactions that constitute homogeneous transactions, the values of these transactions are summed for the purpose of determining the fee.• If, during the proceedings, the Head of the NRA finds that:<ul style="list-style-type: none">– the value of the controlled transaction subject to the APA has been understated in the application– the application includes controlled transactions that are separate homogeneous transactions.the authority shall determine the amount of the supplementary fee, which is calculated in accordance with Article 98(2)–(6) of the DRM Act (Article 99).		



Transfer Pricing Team at the Department for Large Business

The Transfer Pricing Team within the Department for Large Business (DLB) is responsible for implementing tax policy in the area of transfer pricing and conducting proceedings concerning Advance Pricing Agreements (APAs), as well as procedures aimed at eliminating double taxation in matters related to profits of related entities (MAP – Mutual Agreement Procedure). As of September 2024, the team consists of 27 employees organized into three units (two APA units and one MAP unit).*

The Transfer Pricing Team is also involved in, among other activities:

- International cooperation in transfer pricing, including participation in OECD committees and working groups, European Commission working groups, IOTA meetings, the Eastern Partnership program, and meetings of Competent Authorities (CAs) of the Visegrad Group countries and the extended V6 Group;
- Implementation of international programs, participating in:
 - **OECD INTERNATIONAL COMPLIANCE ASSURANCE PROGRAMME (ICAP)** - a voluntary risk assessment program based on cooperation between multinational enterprises (MNEs) and tax administrations. ICAP is designed to offer MNEs, that are willing to participate openly and transparently, greater tax certainty for specific low-risk activities and transactions;
 - **EUROPEAN TRUST AND COOPERATION APPROACH (ETACA)** - a program similar to ICAP for cooperation between EU tax administrations and MNEs (headquartered within the EU), developed by the European Commission as part of efforts to facilitate large enterprises in preventing cross-border tax disputes (involving low-risk transactions);
 - **TAX INSPECTORS WITHOUT BORDERS (TIWB)** - a joint initiative of the OECD and the UNDP aimed at supporting developing countries in building capacity in the area of taxation and improving tax administrations worldwide. In September 2023, a ceremonial inauguration of an assistance program for the Kingdom of Bhutan took place, under which experts from the Team share knowledge, skills, and best practices while assisting with risk analysis, selection, and conducting of tax audits in the field of international tax law and transfer pricing.

The Team also collaborates with non-governmental organizations and academic communities, and actively supports regional NRA units (customs and tax offices, tax offices, tax administration chambers) by providing expert assistance in risk analysis and audits of related entities, as well as organizing trainings, workshops, and meetings. Additionally, the Team undertakes tasks related to the Cooperative Compliance Programme, concluding tax agreements and investment agreements, and participates in the Transfer Pricing Forum. The Transfer Pricing Team also contributes to improving existing legal system in the area of transfer pricing by reviewing and proposing legislative changes.

* Until the end of 2019, APA proceedings were conducted by one unit; from 2020 to mid-2024, by three units. One unit has been responsible for the MAP procedure throughout the entire period.

- ✓ IMPLEMENTATION OF TRANSFER PRICING POLICY
- ✓ CONDUCTING APA AND MAP PROCEDURES
- ✓ INTERNATIONAL COOPERATION
- ✓ PARTICIPATION IN PROGRAMS SUCH AS ICAP, ETACA, TIWB
- ✓ EXPERT SUPPORT FOR THE REGIONAL UNITS OF THE NRA
- ✓ ORGANIZATION OF TRAININGS, WORKSHOPS, SEMINARS
- ✓ ACTING AS OBSERVERS WITHIN THE TRANSFER PRICING FORUM ([LINK](#))
- ✓ ENGAGEMENT IN THE COOPERATIVE COMPLIANCE PROGRAMME ([LINK](#)), THE TAX AGREEMENT PROCEDURE, AND THE INVESTMENT AGREEMENT PROCEDURE ([LINK](#))
- ✓ DEVELOPMENT OF TP REGULATIONS AND INSTITUTIONS IN POLAND



Websites

ICAP - INTERNATIONAL COMPLIANCE ASSURANCE PROGRAMME

■ [PODATKI.GOV.PL](https://podatki.gov.pl)

BASIC INFORMATION ABOUT THE PROGRAM, STAGES, DOCUMENTS, FORMS, DEADLINES, CONTACT DETAILS

■ [OECD WEBSITE](https://oecd.org)

INFORMATION ABOUT THE PROGRAM INCLUDING "HANDBOOK FOR TAX ADMINISTRATIONS AND MNE GROUPS", FAQs, PARTICIPATING ADMINISTRATIONS, STATISTICS

ETACA - EUROPEAN TRUST AND COOPERATION APPROACH

■ [PODATKI.GOV.PL](https://podatki.gov.pl)

BASIC INFORMATION ABOUT THE PROGRAM, STAGES, DOCUMENTS, CONTACT DETAILS

■ [EC WEBSITE](https://ec.europa.eu)

INFORMATION ABOUT THE PROGRAM (PILOT) INCLUDING "GUIDELINES EUROPEAN TRUST AND COOPERATION APPROACH", PARTICIPATING ADMINISTRATIONS, STATISTICS

TIWB - TAX INSPECTORS WITHOUT BORDERS

■ [TAX INSPECTORS WITHOUT BORDERS](https://tiwb.org)

GENERAL INFORMATION ABOUT THE PROGRAM

■ [FAQ](https://tiwb.org)

ANSWERS TO FREQUENTLY ASKED QUESTIONS REGARDING THE OECD AND UNDP INITIATIVE

■ [TAX INSPECTORS WITHOUT BORDERS - ANNUAL REPORT 2024](https://tiwb.org)

REPORT REFLECTS UPON TIWB'S ACCOMPLISHMENTS AND ACTIVITIES OVER THE PERIOD FROM JULY 2022 TO DECEMBER 2023

■ [INFORMATION ABOUT APA](https://podatki.gov.pl)

OVERVIEW OF ISSUES RELATED TO THE APA (podatki.gov.pl)

■ [FORMAL REQUIREMENTS OF AN APA APPLICATION](https://podatki.gov.pl)

FORM WITH MANDATORY ELEMENTS OF THE APA REQUEST (podatki.gov.pl)

■ [APA Q&A](https://podatki.gov.pl)

ANSWERS TO FREQUENTLY ASKED QUESTIONS REGARDING THE APA PROCEDURE - IN POLISH AND ENGLISH (podatki.gov.pl)

■ [APA IMPLEMENTATION REPORT](https://podatki.gov.pl)

ANNOUNCEMENT REGARDING THE APA IMPLEMENTATION REPORT - FORM APA-C (podatki.gov.pl)

■ [APA STATISTICS PL](https://podatki.gov.pl)

REPORT AND BASIC STATISTICAL DATA REGARDING APA (podatki.gov.pl)

■ [MAP PROCEDURE](https://podatki.gov.pl)

GENERAL INFORMATION, MAP APPLICATION, SUBMISSION DEADLINE, UNILATERAL RESOLUTION (podatki.gov.pl)

■ [OECD TP COUNTRY PROFILES](https://oecd.org)

INFORMATION ON TP REGULATIONS AND APA/MAP APPLICABLE IN OECD COUNTRIES [REGARDING POLAND – FEBRUARY 2022]

■ [OECD MAP PROFILES](https://oecd.org)

CONTACT DETAILS FOR FOREIGN TAX ADMINISTRATIONS (MAP, MAP-APA) [REGARDING POLAND – NOVEMBER 2023]

■ [JTPF COUNTRY PROFILES](https://ec.europa.eu)

HISTORICAL INFORMATION ON TP AND APA/MAP REGULATIONS APPLICABLE IN EU MEMBER STATES [REGARDING POLAND – JANUARY 2019]

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