

Q&A – QUESTIONS AND ANSWERS REGARDING APA PROCEDURE

Prefiling meeting regarding APA procedure

1. How to apply for an prefiling meeting?

To set up the date of the prefiling meeting the mail to the Department for Large Business (Departament Kluczowych Podmiotów) should be sent. The e-mail address is as follows: sekretariat.dkp@mf.gov.pl. The mail beside a request for the date of the prefiling meeting should also include the following information regarding the transaction itself:

1. name of the Applicant,
2. the address of the Applicant's registered office,
3. Applicant's Tax Identification Number,
4. name of the Group that the Applicant is a part of,
5. does the applicant know whether any entity from the Group has ever applied for an APA? If so, please provide the name of this entity and the case number,
6. indication of the type of transaction to be covered by the APA (e.g. purchase/provision of services by a domestic entity; sale/purchase of tangible goods in Poland/outside Poland; use/provision of IP by a domestic entity; financial transactions; other).

After receiving the e-mail, a designated employee will contact you to arrange an prefiling meeting.

2. What documents/information should be submitted before an prefiling meeting?

At least 5 business days before the scheduled date of the prefiling meeting, please submit electronically to the above-mentioned address e-mail address or e-mail address of the employee handling the case the following information and materials:

1. presentations containing a description of the transaction in the context of the nature of the taxpayer's business and the industry or business environment, if external conditions have a significant impact on the course of a given transaction,
2. possible questions regarding the procedure and course of proceedings in the APA case,
3. information who will participate in the prefiling meeting on the part of the taxpayer and/or representative (necessary for booking a room and registering the entry of interested parties or sending an invitation to the meeting online).

Lack of the submission of the above mentioned documents in the indicated time **may cause that, the prefiling meeting will be cancelled.**

3. What documents should be presented during the prefiling meeting?

The following documents should be presented during the prefiling meeting:

- powers of attorney granted to persons representing the taxpayer in dealing with tax authorities with an indication of one representative as a representative appropriate for deliveries (with an option selected in the PPS-1 form at item 45 and an addition to item 44 - electronic address in case the representative is an attorney at law, legal advisor or tax advisor),
- confirmation of payment of stamp duty on proxies,
- documents confirming the identity of persons participating in the meeting on the part of the taxpayer.

4. Is it possible to organize the prefiling meeting in the form of a teleconference?

Yes, it is possible. The form of the meeting should be proposed in the meeting request (it can be a teleconference or a personal meeting in the Ministry of Finance building). The form of the meeting does not affect the need to provide the information/documents listed above.

APA application (Wniosek o APA)

5. How to submit the APA application?

- Via electronic means of communication by sending the application to the e-mail box of the Ministry of Finance.
- By sending an application to the address of the Ministry of Finance:
Department for Large Business (Departament Kluczowych Podmiotów)
Ministerstwo Finansów
ul. Świętokrzyska 12
00-916 Warszawa
- By applying at Ministry of Finance Registry Office (working hours: 8:15 - 16:15 Monday through Friday).

6. The application for APA was sent to the Ministry of Finance by post. Will the date on which the APA agreement is initiated is the date of the postal stamp?

No, the date of initiation of proceedings will be the date of receipt of the APA application by the Ministry of Finance. Under art. 165 § 3 of the Tax Code, the date of initiation of proceedings at the request of a party is the date of delivery of the request to the tax authority.

7. What should the APA application contain?

Elements of an APA application that are formal requirements are stated in art. 90 of *Act on double taxation dispute resolution and conclusion of advance pricing arrangements (Polish Journal of Laws of 2019 Item. 2200 (further: DRM Tax Act))* and in art. 168 & 2 of the Tax Code.

It should be added, however, that during the proceedings under art. 91 section 1 of DRM Tax Act in case of doubt regarding the transfer price method chosen by the applicant and the rules of its application or doubts regarding the content of documents attached to the application,

the authority competent for the agreement requests clarification of these doubts or submission of supporting documentation.

8. What the APA application should contain?

The APA application should contain the following information:

- a)** information on the applicant and other related parties involved in the controlled transaction;
 - i. description of the applicant's main business activity:
 - indication of the subject of business activity,
 - indication of the geographic markets in which the applicant operates,
 - description of the industry and market environment,
 - description of the business strategy,
 - ii. list of other related entities participating in the controlled transaction including its seat or place of their management board, tax identification number in case of lack of it - other identification number showing its type, and the subject of their business activity;
 - iii. description of the management structure and organizational chart:
 - applicant,
 - other related entities participating in the controlled transaction;
 - iv. description of the accounting policies adopted to the extent that they apply to a controlled transaction used by the applicant and other related entities participating in the controlled transaction;

- b)** information concerning the controlled transaction covered by the application:
 - i. an indication of the nature of the transaction as initiated or future (including the future transaction mentioned in art. 84 point 2 of the DRM Tax Act),
 - ii. subject and type of controlled transaction,
 - iii. functional analysis of related entities participating in the controlled transaction:
 - description of performed functions,
 - description of the risks incurred,
 - description of assets involved;
 - iv. agreements, intragroup agreements or other documents regarding a controlled transaction;
 - v. information on tax agreements or interpretations regarding the controlled transaction, including transfer pricing agreements;

- vi. indication of the transfer price verification method together with a brief justification of the choice;
 - vii. benchmarking or compliance analysis (including an indication of the party or transaction being subject to examination as part of the analysis if this results from the adopted method and the justification for the choice);
 - viii. description of the transfer price calculation (with the assumptions adopted in this calculation, the financial forecasts on which the transfer price calculation is based);
 - ix. critical assumptions, based on which it was assumed that the method accurately reflects the transfer price;
- c)** indication of the duration of the advance price agreement;
- d)** indication of the type of advance price agreement (unilateral, bilateral, multilateral);
- e)** information on applying the competent foreign authority by foreign-related entities, together with the names of those entities, countries, country of submission, and date of submission, (in case of bilateral and multilateral agreements only),
- f)** an electronic copy of the application for editing.

9. What is the application fee?

Following art. 98 point. 2 of the DRM Tax Act the amount of the application fee is 1% of the value of the transaction being the subject of the agreement, in particular for:

- 1) unilateral agreement:
 - a) concerning only domestic entities - it is not less than PLN 5,000 and not more than PLN 50,000,
 - b) concerning foreign entities - it is not less than PLN 20 000 and not more than PLN 100 000,
- 2) bilateral or multilateral agreements – it is not less than PLN 50 000 and not more than PLN 200 000.

10. How to pay for the APA application?

The fee should be paid within 7 days from the date of submission of the application to the following bank account :

| | |
|-----------------------------|--|
| Name of the account holder: | Ministerstwo Finansów ul. Świętokrzyska 12, 00-916 Warszawa |
| Bank : | Narodowy Bank Polski O/O Warszawa |
| Bank account no : | 10 1010 1010 0038 2522 3100 0000 |

11. In case the application fee was not paid, is it considered by the tax authorities as a formal defect of an application?

Yes, it is. The application fee shall be paid within 7 days from the receipt of the application by the Ministry of Finance (article 98 paragraph 1 of the DRM Tax Act). After this deadline, the tax authority will summon the applicant to supplement the APA application and pay the fee within 7 days under pain of leaving the application unprocessed (article 169 § 4 of the Tax Code).

12. Should the APA application contain the prognosis of the total transaction value for the period covered by APA?

Yes, it should. It is necessary for the calculation of the application fee.

13. To which account number the stamp duty for the power of attorney should be paid?

The stamp duty for the power of attorney shall be paid into the account specified below:

Name of the account holder: Urząd Miasta Stołecznego Warszawy

Centrum Obsługi Podatnika
ul. Obozowa 57
00-056 Warszawa

Account number: **21 1030 1508 0000 0005 5000 0070**

Transfer title: „The stamp duty for the power of attorney...”

14. How would I know if the APA application is compliant with the formal requirements?

In case of any formal defect, the tax authority will summon the applicant to correct the formal defects of the APA application within 7 days under pain of leaving the application unprocessed (article 169 § 4 of the Tax Code).

15. Should the foreign documents be provided together with their certified translation into the Polish?

Certified translations are required in case of documents that constitute the legal basis of the transaction covered by the APA application (agreements between the related parties).

16. Should the comparability analysis be translated into Polish if originally it was prepared in a foreign language?

Yes, it should be translated into Polish in the scope of the descriptive part of the analysis. It does not have to be certified translation.

17. Should the scans of documents submitted together with the APA application be certified as compliant with the original?

Documents attached to the APA application must be originals or copies certified as true copies of the originals (article 194a of the Tax Code). The certification of compliance with the original should contain the signature as well as the place and date of its drawing up. The certification of compliance should be made on each page.

However the annotation “the pages from X to X are compliant with the original document” is acceptable provided the signature and stamp is on the first and last page of the copy. The signature should enable the identification of the person that confirms the compliance of the copy with the original document.

18. Who is entitled to confirm the compliance of the submitted together with the application copies with the original documents?

The entitled persons are:

- notary;
- an authorized representative of the APA applicant: tax advisor, attorney at law, legal counsel.

19. The document is signed only with the illegible signature. Is it acceptable?

No, it is not acceptable. The signature should be legible and enable the identification of the person that signed the document and his/her function.

Apart from that, the following forms of signature are acceptable:

- illegible signature with a name stamp;
- illegible signature with the description printed on the document;
- written annotation on the certified copy of the document that the signature was submitted by the authorised person.

20. The description of the accounting policy was included in the application under the article 90 paragraph 1 point 1 letter d of the DRM Tax Act. Is it acceptable?

One of the formal requirements of the APA application is the submission of the account policy description together with the chart of accounts. These documents should correspond to the scope of the controlled transaction and refer to all related parties involved in the transaction.

21. What period should the financial forecast include?

The forecast should include the period intended to be under the APA.

22. I am an authorized representative of the APA applicant. Can I receive all the official letters concerning the case via ePUAP?

According to the article 144 § 5 of the Tax Code, the official letters can be served to the authorized representative (notary, tax advisor, attorney at law, legal counsel) via electronic means of communication or in the seat of the tax authority.

In case the authorized representative is notary, tax advisor, attorney at law or legal counsel it is obligatory to fill the field 44 of the PPS-1 form and indicate the ePUAP address. If the submitted PPS-1 form lacks this information but the authorized representative would like to receive all the official letters via ePUAP, the new PPS-1 form together with the confirmation of the payment of the stamp duty for the power of attorney or OPS-1 (this form enables to change the scope of the attorney granted) is required.

The APA procedure

23. How long lasts the process of concluding the APA?

It depends on the type of APA and the complexity of the case. According to article 97 of the DRM Tax Act, the APA procedure should be ended:

- in case of unilateral APA - within six months from the date of its initiation;
- in case of bilateral APA - within 1 year from the date of its initiation;
- in case of multilateral APA - within 18 months from the date of its initiation.

If the procedure of concluding the APA cannot be completed within the statutory deadline, the tax authority shall notify the taxpayer thereof, stating the reasons for not meeting the deadline and indicating a new deadline.

24. What period could be covered by the APA?

The APA can be concluded for a maximum of 5 fiscal years and it expires at the end of the applicant's fiscal year. The APA application should contain the proposal of the duration of the APA as well as the date of its beginning. According to the article 95 of the DRM Tax Act, the APA can be valid starting from the date of submission the APA application or optionally from the first day of the applicant's fiscal year in which the APA application was submitted.

More information available at:

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