

Poland publishes draft bill introducing simplified APA procedure

NEW! EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

The Polish Government recently published, on the website of the Governmental Legislative Center, a draft bill regarding resolution of double taxation disputes and Advance Pricing Agreements (APAs). The draft bill also covers a simplified APA procedure. The draft bill follows the introduction of rules in 2018, limiting tax deductibility of several intragroup costs. The Ministry of Finance indicated that it would introduce a simplified APA procedure as a remedy.

According to the draft bill, the simplified APA may be used to secure tax deductibility of the following intragroup settlements:

- ▶ Low value-adding services
- ▶ License fees for use of trademark or knowledge (information) related to the experience gained, suitable for the use in industrial, commercial, scientific or organizational activities (know-how)

Key assumptions for the simplified APA procedure are:

- ▶ Limitation of the scope of information required in the application, while emphasizing the justification of the arm's-length character of settlement
- ▶ Allowance for management statements/confirmations instead of requiring specific documentation
- ▶ Introduction a flat fee application process (PLN20,000), independent of the value of the transaction

- ▶ Introduction of a three-month deadline for the conclusion of the simplified APA procedure
- ▶ Allowance for a change from the standard APA procedure to a simplified one, including for already-submitted applications (in the event of the fulfillment of the conditions for the simplified procedure)
- ▶ Allowance for the change from a simplified APA procedure into a standard APA procedure if there are circumstances preventing the issuance of a simplified APA
- ▶ Issuance of a decision securing deductibility of costs for a 3-year period with the possibility of its renewal
- ▶ The possibility to secure deductibility of 2018 costs

In contrast to the standard APA procedure, the submission of an application for a simplified pricing APA will not be affected by pending tax proceedings, tax inspections, customs and tax controls and proceedings before an administrative court.

The draft bill also contains provisions on the settlement of disputes regarding double taxation, including:

- ▶ Dispute resolution regarding double taxation in the European Union
- ▶ Procedures for eliminating double taxation in the event of a correction of affiliates' profit
- ▶ Procedures for mutual communication conducted based on double tax treaties
- ▶ Local adjustments

The draft bill is now subject to tax consultation.

Taxpayers who want to secure the deductibility of their intragroup costs for 2018 should consider preparing for the simplified APA procedure. Also, taxpayers who have obtained an unfavorable individual tax ruling regarding the right to treat costs as tax deductible, may try to use simplified APA as a remedy.

For additional information with respect to this Alert, please contact the following:

EY Doradztwo Podatkowe Krupa sp. k., Warsaw

- ▶ Andrzej Broda, *International Tax Services* andrzej.broda@pl.ey.com
- ▶ Aneta Błażejewska-Gaczyńska, *Transfer Pricing* aneta.blazejewska-gaczynska@pl.ey.com

Ernst & Young LLP (United Kingdom), Polish Tax Desk, London

- ▶ Marta Kedziorska marta.kedziorska@uk.ey.com

Ernst & Young LLP (United States), Polish Tax Desk, European Business Group, New York

- ▶ Sylwia Migdal sylwia.migdal1@ey.com
- ▶ Joanna Pachnik joanna.pachnik1@ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

Transfer Pricing Group

© 2019 EYGM Limited.
All Rights Reserved.

EYG no. 002055-19GbI

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com