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TAX ADVISERS

Advance Pricing Agreements

The amendment of June 30, 2005 of Tax Ordinance, allows for the possibility to enter into so-called advance pricing agreements (“APA”). This procedure permits taxpayers to enter into agreements with tax authorities on the application of the method of determining prices in related party transactions. Such agreements include on the taxpayer’s request provisions interpreting tax law, whereby the tax authorities acknowledge the correctness of a particular method of transfer pricing. The provisions on APA came into force on January 1, 2006.

The main purpose of such agreements is to eliminate potential disputes between taxpayers and the tax authorities, and to encourage foreign investment in Poland. Solutions in the form of such bilateral and multilateral agreements may prove particularly attractive to investors intending to minimise the risk of their intra-group transactions being challenged by the tax authorities. These agreements prevent any unilateral corrections of the transaction prices which might result in double taxation.

The Polish regulations provide for three types of APAs:

- unilateral agreements: agreements between a taxpayer and the Minister of Finance regarding transactions concluded between related Polish and the foreign parties;
- bilateral agreements: agreements between a Polish entity and the Minister of Finance, entered into after the receipt of approval of foreign tax authorities appropriate for the foreign contractor;
- multilateral agreements: agreements concluded in situations in which foreign entities from more than one country are involved in the transaction. Such multilateral agreements require the approval of tax authorities of each of the respective countries.

APAs may involve future transactions as well as transactions initiated before submitting an application.

APA is issued in the form of a decision. The duration of APA may be established individually, it cannot, however, exceed 5 years. It is possible to prolong an existing APA.

As far as the timing of the procedure to obtain APA is concerned, the procedure for the issuance of a unilateral agreement should, as to a rule, not exceed 6 months. In the case of a bilateral agreement the procedure may continue for one year, while in the case of a multilateral agreement - 18 months.

The APA regulations provide for the possibility to change or reverse the decision in the case of a change in economic circumstances resulting in “substantial inadequacy” of the transfer pricing method otherwise considered correct.

When applying for APA, the applicant is obligated to submit, inter alia the following documents:

- the proposal of the method of determining of the transaction price, and in particular indication of one of the methods specified in the CIT regulations,
- the description of the mode of application of the method of price calculation including financial forecasts used to calculate the price, the analyses of the prices applied in comparable open-market transactions (an economic analysis),
- all significant data which may influence the correct determination of the transaction price (including functional analysis, information regarding the current situation in the business, organisational and capital structure of the group, etc.),
- documents having significant influence on the determination of the transaction price (e.g. the written agreements),
- proposals regarding the duration of APA,
- a list of related parties participating in the transaction, including their consent to submit all documents relating to the transaction to the tax authorities and to provide necessary explanations.

The scope of information the taxpayer is required to submit to the tax authority is very broad. It includes data regarding internal economic policy of the taxpayer, which the taxpayer may not wish to disclose. Taking this into account, special regulations have been adopted, limiting the access of officers to information included in applications submitted to the Minister of Finance. Therefore, the information submitted by the taxpayers may be accessed only by the employee supervising the case, its immediate superior and by the Minister of Finance.

The submission of the application for a decision regarding APA is subject to a fee of 1% of the transaction value, within the following brackets:

- a unilateral agreement with a Polish entity – the minimal fee is PLN 5,000 and the maximum fee is PLN 50,000,
- a unilateral agreement with a foreign entity – the minimal fee is PLN 20,000 and the maximum fee PLN 100,000,
- bilateral or multilateral agreements – the minimal fee is PLN 50,000 and the maximum fee PLN 200,000.

The prolongation fee is 50% of the fees specified above.