

Tax and Legal Newsletter

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CMU approves new resolution on Advance Pricing Agreement in controlled transactions

The new resolution No. 504 of 17 July 2015 "On approval of the Procedure for an advance pricing agreement in controlled transactions, based on the results of which the unilateral, bilateral or multilateral agreements for the purposes of transfer pricing are concluded" (the "Procedure") was adopted by the Cabinet of Ministers of Ukraine.

The procedure repeals the CMU resolution no.764 of 17 October 2013.

According to the Procedure, an advance pricing agreement ("APA") is an agreement concluded for a definite period of time between a large taxpayer and the SFS to determine the criteria for future business transactions of the taxpayer to be deemed in line with the "arm's length" principle.

In order to initiate the APA a taxpayer shall submit an application to the SFS and, inter alia:

- ▶ Transfer pricing documentation, which should contain information as stated in sub- paragraphs "a" - "i" of paragraph 39.4.6 of Article 39 of the Tax Code;
- ▶ Accounting data and financial reporting of the taxpayer for the last three reporting (fiscal) periods (years);
- ▶ Description of ongoing tax disputes concerning the subject matter of the agreement (if any);
- ▶ Description of impact of the Double Tax Treaty (Agreement) on the subject matter of the agreement (if any);
- ▶ Analysis of the possible impact of APA on the tax liabilities of the parties to the controlled transaction;
- ▶ Copies of documents confirming the fact that the taxpayer's counterparty in the controlled transaction has filed an application for the APA procedure (in the event of such application) to a foreign tax authority;

In case the taxpayer fails to submit, submits not in full and/or violates the terms of submission of such documents and materials, the SFS will not consider such application and will inform the taxpayer of such a decision.

For the purposes of the APA application resulting in bilateral or multilateral agreements, the taxpayer shall also submit the copies of the documents and materials translated into English.

During the APA application process, the SFS has the right to:

- ▶ Request the taxpayer to provide supplementary documents and materials;
- ▶ Make appointments and approve the scheduling of next meetings with the officers of the taxpayer;
- ▶ Visit and inspect premises, facilities and structures, where the taxpayer performs its activities related to the controlled transactions;
- ▶ Interview the taxpayer's officers and/or employees on issues related to the pricing procedure.

Based on the results of the application processing the SFS takes a decision on its readiness to conclude the APA indicating the place, date and time of its signing or a reasoned decision to refuse to conclude such an agreement.

The signed APA does not relieve the taxpayer from the obligation to compile and submit information on performed controlled transactions and the report on controlled transactions.

The APA takes effect on 1 January of the calendar year following the year of its signing. The APA duration shall not exceed three calendar years.

The taxpayers shall submit a report on the APA implementation by 1 May of the year following the reporting year. Failure to submit the report on the APA implementation or submitting the report with inaccurate and/or incomplete information shall be the reason for the APA termination.

The SFS may terminate a unilateral APA in case the false information or errors during the process of application or signing of the APA are found.

We will continue monitoring developments and will be pleased to answer any questions on the above information.

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