

Advance pricing agreement with tax authorities (2/23/18)

Nowadays more and more multinational enterprises decide to enter into an agreement with tax authorities for setting the price of a transaction between related parties in advance (Advance Pricing Agreement or APA). This article explores the Latvian practice of entering into an APA.

The first APA was concluded by a multinational group in the US in 1989 to mitigate transfer pricing (TP) risks in a timely, efficient and cooperative manner. This practice has since been adopted by more than 60 countries, including Latvia.

APA in Latvia

Since 2013 Latvian taxpayers have been allowed to ask the State Revenue Service (SRS) to enter into an APA for a particular transaction or type of transaction with a related foreign company. Section 16.1 of the Taxes and Duties Act and the Cabinet of Ministers' Regulation No. 16 of 3 January 2013 define an APA and lay down the conditions for entering into one.

A Latvian-registered company that makes or starts making transactions with what is a related foreign company under the Taxes and Duties Act may ask the SRS to enter into an APA for the next three years if the value of a transaction or proposed transaction with that related foreign company exceeds €1,430,000 a year. Procedures for entering into an APA are specified by the Cabinet Regulation.

An APA gives some comfort to the taxpayer. If the taxpayer has acted according to the terms of the APA and his business has not undergone any change out of line with the APA, the SRS cannot adjust the agreed arm's length price for a particular transaction or type of transaction as part of their audit or other control measures.

When filing an APA application and starting the APA procedure, the taxpayer will be required to pay a fee of €7,114 in two instalments:

- 20% before filing the application; and
- 80% after the SRS has considered the application and agreed to start the APA procedure.

If the SRS rejects, or the taxpayer refuses to continue, the APA procedure after 20% or 80% of the fee has been paid, there will be no refund.

Although information about APAs concluded in Latvia is not publicly available, we know that only a few taxpayers have taken the opportunity to enter into an APA since the law came into force. The past year has seen more and more taxpayers showing an interest in entering into an APA for their intragroup transactions involving Latvian-registered companies to ensure the SRS cannot make adjustments as a result of their control measures.

Proposals for amending the Taxes and Duties Act

Parliament is to debate a set of proposals in their second reading to amend section 16.1 of the Act so that the SRS, too, can offer an APA. However, an annotation to the proposals fails to clarify whether the fee of €7,114 will still be payable by the taxpayer.

According to the proposals the APA procedure can be started also for past financial years within a five-year limit for TP audits.