
Significant changes to Polish Transfer Pricing regulations – MAP procedure

In brief

New law changing significantly the Polish transfer pricing regulations came into force as of 1 January 2019. The new law was followed by further decrees focusing on various aspects of the new transfer pricing regime.

In particular, the Decree of the Minister Finance of 21 December 2018 on the manner and procedure of double taxation elimination in case of adjustment of income of related entities with respect to the Corporate Income Tax (“Decree”), regulates Mutual Agreement Procedure (“MAP”) in case of profitability adjustments.

Detailed information

A mutual agreement procedure (MAP) is a feature in many double taxation treaties.

A MAP under the Decree offers a solution to a situation when double taxation occurs as a result of tax decision or tax audit protocol in relation to a transfer pricing adjustment. During the MAP procedure, the tax administrations’ representatives negotiate the application of the arm’s length principle to the transaction so that the transacting parties may avoid double taxation.

While the MAP solution as such was already available to the Polish taxpayers, the Decree distinguishes a specific set of circumstances

related to income adjustments stemming from application of the arm’s length principle.

Legal basis

In order to eliminate double taxation on the income of related entities, a domestic entity may apply to the Minister of Finance for the initiation of a MAP based on:

- Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises,
- Double Taxation Agreements (DTAs), to which the Republic of Poland is a party.

Elements of the application

The Decree specifies the elements that the application should contain. These include i.a.:

- a description of the facts of the case,
- copies of tax decisions, tax audit protocols or other documents evidencing double taxation;
- justification for the application,
- statement by the domestic entity that it is ready to provide the Minister with all documentation and any information that may affect the outcome of the case.

If the application does not contain all the required elements, the Minister

requires the domestic entity to complete it, within 2 months.

The case is considered as reported from the date of receipt of the application with all elements indicated, or from the day that the missing elements were provided to supplement the application.

Timeline

The application should be submitted no later than three years from the date of delivery of the tax audit protocol or tax decision to the taxpayer or its related party, unless the DTA sets a different date.

The mutual agreement procedure should be completed within 2 years.

The two-year period begins from the later of the following dates:

- the date of delivery of the final tax decision or equivalent document;

- the date of reporting the case.

The takeaway

Currently, if the double taxation already occurred, the MAP procedure is the best way to eliminate such double taxation, as it allows settling disputes regarding cases of double taxation where the same profits have been taxed in two jurisdictions. Nevertheless, the APA procedure remains the best way to confirm arm's length nature of the transaction in advance, as in this case the tax authorities confirm the transaction conditions upfront.

While the MAP procedure was already available, the new Decree offers a solution tailored to transactions

between the related parties where the income adjustment results from application of arm's length principle.

Therefore, while previously in certain circumstances the taxpayer would follow the MAP procedure, currently when the income adjustment between the related parties stems from applying the arm's length principle, the MAP procedure under the Decree will be appropriate. It is in the interest of the taxpayer to avoid unilateral adjustments and seek to recover the tax paid by one of the transaction participants.

The Decree came into force on January 1, 2019.

Let's talk:

Piotr Wiewiórka

Partner

+48 502 18 4645

piotr.wiewiorka@pwc.com

Sebastian Lebda

Director

+48 22 7464675

sebastian.lebda@pwc.com

Joanna Kubińska

Director

+48 502 184 882

joanna.kubinska@pwc.com

Piotr Niewiadomski

Senior Manager

+48 519 50 7279

piotr.niewiadomski@pwc.com

Wojciech Cipiowski

Senior Manager

+48 519 507 472

wojciech.cipiowski@pl.pwc.com