**TRANSFER PRICING**

**Advance pricing agreements (APAs)**

**Detailed description**

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1. WHAT IS ADVANCE PRICING AGREEMENT (APA)?

On 1 January 2017 the [Rules amending the Rules on implementation of the Tax Procedure Act](http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV7927) (Official Journal of the RS No 85/16 of 28 December 2016) came into force, which in Articles 6.a to 6.h defines implementation and procedure for conclusion of APA.

APA is an agreement, which defines methodology, critical assumptions and other appropriate criteria for definition of transfer prices for specific transactions within the stated period before implementation of transactions among [associated persons](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4687). Financial administration of the Republic of Slovenia (hereinafter: FURS) is the competent authority for all types of APAs.

1.1 Why is APA useful?

Transfer prices and related international taxation is lately an important field of FURS operations also because an increasing number of companies enter into transactions with associated international companies due to globalisation. The field of international taxation and transfer pricing (hereinafter: TP) is with participation of the interested public, the economy, developed and also undeveloped countries within [BEPS project](http://www.oecd.org/ctp/beps-2015-final-reports.htm), which is managed by the Organisation for economic cooperation and development (hereinafter: OECD) in the period of large changes, which will influence changes of the international legislation as well as changes of individual provisions in national legislations of many states, including Slovenia.

Such changes mean great challenge and risk for taxpayers and also for the tax authorities. Risk mainly within the meaning of double taxation and also double non-taxation. APA is a very effective method for regulation of risk connected with transfer pricing and changes of international and national tax policies. APA represents an instrument for managing risk of transfer pricing for the tax authorities because taxpayers reveal information on the method and accurate definition of transfer pricing at their business activities and on the other side it represents an instrument for provision of more stable tax and economic environment for multinational companies. APAs prevent additional adjustments, double taxation and enable valuation of transactions in accordance with arm's length principle, which consequently means that the created value (profit) is taxed in the state where it has occurred. On this basis APAs are already considered by [OECD guidelines](http://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm) in points 4.124 to 4.166.

The concluded APA ensures that the tax authorities will comply with the concluded APA and that they will not require additional adjustments for transactions, which are subject to a specific APA if taxpayer fulfils all legal provisions and provisions from APA during the period of validity of the concluded APA. As it is defined in Article 14.f of the [Tax Procedure Act (hereinafter: ZDavP-2)](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703), the concluded APA doesn't limit rights of the tax authorities at implementation of their authorisations.

1.2 Who can apply for conclusion of APA?

Instrument of APA is intended for all companies, which enter into transactions with associated persons and which are liable on the basis of the Act, which arranges corporate income tax. It is especially appropriate for multinational companies, which consider themselves as an important part of the society. In addition to taking care for the environment, employees, customers and profit, these companies have included commitment for fulfilling legally prescribed tax liabilities in their strategies and they are willing to accurately reveal and explain all facts and circumstances of the associated transaction, which will be subject to APA.

1.3 Types of APAs

Taxpayers may apply for conclusion of unilateral, bilateral or multilateral APAs. APA is an agreement between the tax authority and a taxpayer. Bilateral or multilateral APAs are concluded on the basis of mutual agreement procedure with the competent authorities of another state, which is also confirmed and signed by the taxpayer with whom consequently (implementing agreement) bilateral or multilateral APA is concluded. Bilateral and multilateral APA takes into consideration all parties to the agreement.

Bilateral and multilateral APAs already due to participation of two or more states provide that agreements in relation to transfer pricing are in compliance with arm’s length principle and that profits are more accurately allocated among all states involved. It is highly recommendable in cases of complex transactions, where unique intangible assets are used and it is very difficult to find comparable companies or comparable unrelated transactions.

Unilateral APAs are used in cases if there is no convention on avoidance of double taxation concluded with the state of the associated person or in cases when transactions are of small value and it is not difficult to find a transfer pricing method or independent comparables. In these cases bilateral or multilateral APA may mean larger costs than benefits in relation to the acquired certainty.

1.4 Obligation to exchange concluded APAs

To prevent states from conclusion of agreements harmful for other states the legislation was adopted in Slovenia on the basis of Directive 2015/2376/EU, which states mandatory automatic exchange of rulings with cross-border effect and APAs. It is implemented in Article 248.a of ZDavP-2 and defines the obligation of reporting individual data about the issued APA to another competent authority of a Member State and the European Commission. Slovenia has also committed itself to exchange of APAs with OECD countries within Action 5.

2. ADDRESS FOR INITIATIVES IN WRITING AND APPLICATIONS

1. electronic address: [gfu.fu@gov.si](mailto:gfu.fu@gov.si)

In writing to the following address:

FINANČNA UPRAVA REPUBLIKE SLOVENIJE

Generalni finančni urad

Uprava za nadzor

Oddelek za transferne cene

Šmartinska 55

1000 Ljubljana

3. CONDITIONS FOR CONCLUSION OF APA

The Act indirectly and directly states conditions for conclusion of the agreement. In this place the difference shall be emphasized between conditions for accession to the agreement, i.e. conditions for submission of the initiative in writing or filing the application and conditions that APA is signed on the basis of the adopted application and conducted procedure. The first conditions result in a written notice of the tax authorities about the adopted application for conclusion of APA and call for payment. These are mainly formal conditions as follows:

* the taxpayer enters into transactions with associated persons,
* the taxpayer is liable on the basis of the ZDDPO-2,
* the meeting in connection with conclusion of APA has been conducted before filing the application,
* the transaction has economic content and serious intention for implementation,
* the transaction has provided appropriate time duration and this is not a transaction before expiry.

The other conditions refer to the final signature of APA and they shall be achieved through the whole procedure until the final signing of APA and they represent principles of the procedure. These conditions are:

* active participation of taxpayer in meetings,
* participation of taxpayer with submission of appropriate documentation,
* all other forms of communication, which assist to signing of APA,
* constructive participation in all fields to conclude APA,
* the consent of the tax authorities and taxpayers about the contents (appropriate method, criteria, critical assumptions, etc.) of APA and signature of APA.

4. PROCEDURE FOR CONCLUSION OF APA

4.1 Pre-filing

Before filing application for APA the taxpayer files a written initiative for conclusions of APA. The taxpayer and the tax authority discuss all issues related with the planned APA (type, subject, period, time limit for submission of the application, etc. The tax authority recommends filling applications before beginning of the tax period, in which APA will come into force.

4.2 Filling application for conclusion of APA

The taxpayer files a formal application in writing for conclusion of APA after the performed discussion with the tax authority, where they have been mutually informed and they have brought important topics in line, related to APA, as it is defined in the fourth paragraph of Article 6.b of the Rules amending the Rules on implementation of the Tax Procedure Act.

In three months after filing the application the tax authority informs the taxpayer in writing whether they will start the procedure for conclusion of APA. In cases when the application is adopted the authority informs the taxpayer also about the time limit (30 days after the notice is received) for payment. In cases when the application is rejected the tax authority informs the taxpayer about reasons for the decision against which the appeal is not possible.

4.3 Conclusion and signing of APA

APA shall be issued in compliance with the valid regulations on taxation and tax procedure. It is issued for the period of maximum five years with the option of renewal. Uninterrupted and constructive cooperation of the taxpayer and the tax authority is necessary for the procedure of conclusion of APAs. This means that the flow of submission of information and documentation and discussions on current open topics shall be fluid. Effective communication and organisation are decisive for successful conclusion of APA procedure.

At bilateral and multilateral APA the conclusion requires also the mutual agreement procedure (hereinafter: MAP) with another state, where the taxpayer doesn't participate directly, but the person is informed about possible adopted agreement in MAP. The adopted agreement in MAP is (all parties in the procedure of conclusion of APA agreement agree) the base for conclusion of bilateral or multilateral APA.

In cases where the agreement in MAP is not concluded or the taxpayer doesn't agree with the agreement adopted in MAP, it is possible to conclude unilateral APA with the taxpayer, but it doesn't eliminate the risk of double taxation and it doesn't oblige other state not to perform additional adjustments for transactions which are subject to APA.

The tax authority and taxpayer sign APA when they are brought in line with all provisions of APA, which is possible only with fair treatment and good mutual cooperation.

4.4 Critical assumptions

Because APA refers to transactions in the future, it is necessary to define critical assumptions which may influence the price and conditions of transactions.

The purpose of definition of critical assumptions is to protect all parties to APA against risk that APA would not reflect arm's length principle. Determination and precise definition of assumptions provide that conditions and circumstances of transactions, which are subject to APA, are within limits agreed. Possible specific appropriate frames of assumptions prevent small changes of critical assumptions from changing APA or terminating it. If critical assumptions are violated, so they are changed in such a way that they considerably influence the suitability of the selected methodology for transfer pricing, APA changes, otherwise it ceases to be valid.

4.5 Annual reporting during validity of APA

Taxpayers are obliged to report about validity of critical assumptions and performed adjustments once a year. The report shall be submitted together with submission of the corporate income tax return, but in a separate document. Taxpayers are also obliged to inform the tax authorities about changes of critical assumptions, which are not in compliance with criteria defined in APA in 30 days after identifying those changes.

5. PAYMENT

In connection with conclusion of APA taxpayers perform payment in the amount of 15,000 EUR in 30 days after receipt of a notice in writing from the tax authorities that they will initiate the procedure for conclusion of APA. In cases of cancellation of APA taxpayers are not entitled to payment refund. Payment for extension of APA is 7,500 EUR. If APA is not concluded due to reasons, not attributable to taxpayers, they are refunded with the lump sum amount of 5,000 EUR.

6. EXTENSION OF APA

APA may be extended if circumstances in connection with subject to the agreement are unchanged. Taxpayers may submit an initiative in writing to the tax authorities for its extension 6 months before expiry of validity of the existing APA.

7. CHANGES AND CESSATION OF APA

In cases when APA doesn't reflect arm's length principle anymore because critical assumptions are violated or they are changed to such extent that they considerably influence the suitability of the selected methodology for transfer pricing, it shall be changed.

Taxpayers and tax authorities may conclude an annex on changes to APA, where the date of change taking effect is also defined. If it is not possible to agree about changes, APA ceases to be valid on a certain date. Tax authorities inform the taxpayer about the date on which APA ceases to be valid.

APA also ceases to be valid with expiry of the validity period or if the taxpayer fails to report to the tax authority during the validity period of APA about implementation of APA.