

Draft amendments to the Tax Code – advanced pricing agreements and other aspects

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On 27 March 2020, the Russian Ministry of Finance released an updated version of the draft law “On amending part one of the Russian Tax Code to improve tax control over prices, and on the procedure for entering into advanced pricing agreements” (hereinafter, the “Draft Law”).

The Draft Law is intended to optimise the procedure governing the conclusion of advanced pricing agreements (hereinafter, “APA”), to define the conditions under which transactions can be regarded as controlled, and to introduce some other specific amendments to the provisions of the Russian Tax Code

Amendments to the APA conclusion procedure

The key amendments covered by the Draft Law are as follows:

1. Giving taxpayers that have completed a foreign trade transaction and applied for an APA involving foreign tax authorities the right to state in their APA the price control method used under the laws of the foreign jurisdiction. This right is granted on the condition that the result from using this method will be comparable with the results gained from application of the method stipulated by Article 105.7 of the Russian Tax Code.
2. Providing the taxpayer with the option to enter into a unilateral APA, if, following consideration of an APA draft, the Russian and foreign tax authorities fail to reach a mutual agreement.
3. Placing limits on tax audits connected with transactions covered by an APA, unless a decision has been made to conclude or deny conclusion of the APA.
4. Changing the procedure covering deadlines: the deadline for considering an APA application, along with other associated documents, is proposed to run from the date of

submission of the application (now, this deadline is calculated from the date of application submission along with all related documents). This amendment mitigates the risk of delays in the APA conclusion process.

5. Removing the need to submit documents already in the possession of the tax authorities (in the context of considering an application to conclude an APA).
6. Providing an option to extend the provisions of an APA to cover a period from the first day of the calendar year in which the taxpayer for the first time applied for an APA to be concluded, through to the effective date of the APA, if, following consideration of the first application, an APA was denied on the grounds that mutual agreement was not achieved with the tax authorities of a foreign counterparty.

However, special attention must be given to the following amendments. They require taxpayers to carry out significant preparatory work and take into account the potential consequences when choosing to apply:

1. The list of reasons for refusing to conclude an APA has been expanded. The following additional grounds have been highlighted:
 - failure to reach a mutual agreement with the tax authorities of a foreign counterparty;
 - failure by the taxpayer to submit additional details in due course;
 - if the taxpayer disagrees with the decision requiring it to revise an APA draft; and
 - if a taxpayer disagrees with a decision to enter into an APA by refusing to execute the APA, including by the taxpayer failing to sign the execution documents.
2. A special procedure for tax audits has been introduced for controlled transactions: for transactions where an application to conclude

an APA was submitted and denied, the deadline for initiating an audit is going to be calculated starting from the date of the decision to deny the application (and running for the subsequent 2 years from the date of such a decision). In addition, periods for which controlled transactions may be audited are extended from 3 to 5 years.

3. The period in which an APA can be considered is to be significantly extended if it involves foreign trade transactions involving foreign tax authorities. The new time will be 24 months from the moment an application is accepted. However, this consideration period may also be extended to 27 months, though it can be suspended for periods in which foreign tax authorities are providing documents as part of the DTT mutual agreement procedure.
4. The period of time for a taxpayer to provide additionally requested APA-related documents is to be limited to 10 business days from receipt of a relevant request. The time period for supplying a revised APA draft and associated documents relating to a controlled transaction is to be limited to 30 business days from receipt of the relevant request by the taxpayer.
5. A taxpayer is obliged to notify the tax authorities in writing if a foreign counterparty submits an application to enter into an APA. It must do this no later than 6 months from the date of submission by the foreign taxpayer of such an application.

Other amendments

The Draft Law seeks to clarify several provisions regarding the definition of a controlled transaction. These amendments are intended to:

1. Ensure the correct application of Article 105.14 of the Russian Tax Code in respect of foreign trade transactions involving ferrous metals, mineral fertilizers and precious stones by way of eliminating discrepancies between the conditions for declaring transactions controlled, as established by paragraph 2 of Clause 1, and by Clause 5 of Article 105.14 of the Russian Tax Code. As a result, foreign trade transactions involving the above groups of goods and executed with unrelated parties may become controlled when the relevant TNVED (International Business Classification) codes are introduced, as allowed by the Order of the Russian Ministry of Industry and Trade, dated 28 April 2018, No. 1714.
2. Formalise the rules previously reflected in interpretations published by the Russian Ministry of Finance regarding threshold calculations. For persons gaining income from transactions but not calculating corporate profit tax pursuant to the provisions of the Russian Tax Code, it is proposed that the estimated amount of income from transactions is calculated, and that they are declared controlled subject to the procedure established by Chapter 25 of the Russian Tax Code, using the accrual method.

The Draft Law is expected to be adopted in 2020 and take effect from 1 January 2021. Its provisions will apply to transactions for which income and/or expenses will be recognised in accordance with Chapter 25 of the Russian Tax Code starting from 1 January 2021. For more details about the Draft Law, click [here](#).

Our team at KPMG will be pleased to answer any questions you may have about this Draft Law in more detail and give you any assistance you need in obtaining an APA, or in respect of any other issues related to the application of transfer pricing legislation.

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