



APA & MAP Country Guide 2019 – Poland

CONNECTING THE DOTS OF INTERNATIONAL TAX CONTROVERSY



Poland

APA Program

KEY FEATURES	
Competent authority	The Head of National Fiscal Administration (Tax authority)
Relevant provisions	Unit IIa, arts 20a-20r of the Tax Ordinance Act 1997
Types of APAs available	Unilateral, bilateral, and multilateral APAs are available.
Acceptance criteria	No specific guidance.
Key timing requests, deadlines	Unilateral APAs should be concluded within six months; bilateral APAs should be concluded within 12 months; and multilateral APAs should be concluded within 18 months. The Tax authority may extend the deadline in certain circumstances.
APA term limits	Restricted to a maximum of five years, with possibility of renewal for subsequent periods no longer than five years.
Filing fee	1 percent of the transaction value and with the following thresholds: Domestic unilateral agreement PLN5,000-50,000 (approx. USD1,365-13,650) Foreign unilateral agreement PLN20,000-100,000 (approx. USD5,460-27,300) Bi/multilateral agreements PLN50,000-200,000 (approx. USD13,650-54,600) Fee for renewal amounts to half the fee for the original APA application.

Rollback availability	Rollback for prior years is not available. APAs can only apply prospectively from the day of submission of the APA application.
Collateral issues	No specific guidance.

PRE-FILING REQUIREMENTS

Overview	The Taxpayer may consult with the Tax authority in relation to the expediency of concluding the APA, the information required to be included in the application, the procedure and expected time of concluding the APA, and the expected conditions and validity attached to it once effective.
Anonymous pre-filing availability	No specific guidance

APPLICATION REQUIREMENTS

Content of application	<p>APA applications must include the selected TP method for fixing the transaction price (or the selected method of the division of costs in the case of APA applications concerning the division of costs). Specifically applications must present include:</p> <ul style="list-style-type: none"> • description of the manner of application of the proposed method in relation to the subject of the application, indicating in particular: <ul style="list-style-type: none"> • transaction price calculation algorithm; • financial forecasts on which the transaction price calculation is based; and • analysis of comparative data used to calculate the transaction price.
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- circumstances which may affect the correct setting of the transaction price:
 - conditions set between parties and a description of the course of the relevant transaction between the related parties;
 - analyses of assets, functions and risks of parties, and descriptions of the transaction related costs envisaged;
 - a description of an economic strategy or any other circumstances that may affect the transaction price;
 - data concerning the economic situation of the branch of the industry in which the applicant pursues its activity and data concerning business transactions made by unrelated entities used for calculating the transaction price; and
 - the organisational and capital structure of the applicant and affiliated entities, and financial accounting principles applied by them.
- documents exerting an important influence on the conditions of the transaction, in particular texts of agreements, arrangements and other documents indicating the intentions of parties to the covered transactions;
- the proposed duration of the APA with an indication as to whether the application is intended to commence on the day of submitting the APA application;
- a list of related entities with whom the APA will be concluded and their consent to submit required documents to the Tax authority; and

(cont.)	<ul style="list-style-type: none"> • a description of critical assumptions backing the proposed TP method in accordance with the arm's length principle. <p>Acceptance of the specified TP method in the APA is delivered in the form of an administrative decision by the Head of the National Tax Administration.</p>
Language	The documentation should be submitted in Polish.
SME provisions	No specific guidance.

OTHER PROCEDURAL CONSIDERATIONS

General	The Tax authority follows a standard pre-filing, application and monitoring process. There are no unique procedural aspects.
Monitoring & compliance	The Taxpayer must provide an annual report together with their tax return for the duration of the APA.
Renewal procedure	Applications for the renewal of APAs are required to be lodged six months before expiry. Renewals will be allowed if the elements set in the APA decision issued by the Minister of Finance for setting the transaction price between affiliated entities has not materially changed.

MAP Program

KEY FEATURES

Competent authority	The Head of the National Tax Administration
Relevant provisions	Decree of the Ministry of Finance of December 21, 2018.
Acceptance criteria	Taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a DTT to which Poland is signatory.
Key timing requests, deadlines	Most of Poland's DTTs permit Taxpayers to present a case to the Polish Ministry of Finance within three years from the first notification to the Taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit. Taxpayers have three years to present a case to the Ministry of Finance under the EU Arbitration Convention (90/436/EEC).

APPLICATION REQUIREMENTS

Content of application	<p>In order for the MAP request to be accepted, it must include the following:</p> <ul style="list-style-type: none"> names, addresses and tax identification numbers of the Polish Taxpayer entity and relevant foreign related parties; a description of the facts of the case, taking into account the existing links between the domestic entity and related entities; specification of the tax year for which the application relates;
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(cont.)	<ul style="list-style-type: none"> • copies of tax decisions, inspection reports or other documents evidencing the occurrence of double taxation; • information on tax or court proceedings initiated by the Taxpayer or related entities, including court judgments issued in the case; • justification of the application, in particular setting out the application of the principles set out in article 4 of the EU Arbitration Convention (arm's length principle); and • statement by the domestic entity that it is ready to provide full documentation without delay, and any information that may affect the outcome of the case. <p>The MAP request should be accompanied by tax documentation, financial statements, trade agreements on transactions, benchmarking used by parties to determine remuneration or transaction prices, audit reports or tax decisions that indicate that double taxation has occurred or may occur, and all correspondence with foreign administrations tax, which results in the principles of an extra-valuation.</p>
Language	The documentation should be submitted in English or Polish.

OTHER PROCEDURAL CONSIDERATIONS

Interaction with domestic proceedings	Taxpayers may pursue Polish domestic legal proceedings separately from MAP. Any means of appeal available under the domestic law is without prejudice to the MAP.
Arbitration	As Poland is a member of the EU, taxpayers may initiate the arbitration procedure under the Tax Dispute Resolution Mechanism Directive on October 10, 2017. The Directive is applicable to matters submitted after July 1, 2019, on issues related to the tax year starting on or after January 1, 2018. The EU Arbitration Convention also imposes a binding obligation on EU member states to eliminate double taxation under DTTs including, if necessary, by reference to the opinion of an independent advisory body.

STATISTICS

APA	There are no statistics publicly available.
MAP	Poland had a total of 109 active MAP applications as of December 31, 2017. The average time needed to close MAP cases is 36 months for transfer pricing cases, and 38 months for other cases.

Double Taxation Treaty Network

The following treaties include MAP provisions which are the basis for bilateral and multilateral APA negotiations:

Albania	Egypt	Jordan	New Zealand	Syria
Armenia	Estonia	Kazakhstan	Norway ^(vi)	Taipei ^{(iii), (iv)}
Australia	Finland ^(iv)	Korea	Pakistan	Tajikistan
Austria	France	(Republic of)	Philippines	Thailand
Azerbaijan	Georgia	Kuwait	Portugal ^(vi)	Tunisia
Bangladesh	Germany	Kyrgyzstan	Qatar	Turkey
Belarus	Greece	Latvia	Romania	Ukraine
Belgium ^(v)	Guernsey ^(iv)	Lebanon	Russia	United Arab
Bosnia- Herzegovina	Hungary	Lithuania	Saudi Arabia ^(vi)	Emirates
Bulgaria	Iceland	Luxembourg	Serbia	United
Canada ^(iv)	India	Macedonia	Singapore ^(iv)	Kingdom
Chile	Indonesia	Malaysia ^(iv)	Slovak	United States
China	Iran	Malta	Republic	Uzbekistan
Croatia	Ireland	Mexico	Slovenia	Vietnam
Cyprus	Isle of Man ^(iv)	Moldova	South Africa	Zimbabwe
Czech	Israel	Mongolia	Spain	
Republic ^(v)	Italy	Montenegro	Sri Lanka	
Denmark	Japan	Morocco	Sweden	
	Jersey ^(iv)	Netherlands ^(v)	Switzerland ^(v)	

Notes

- i. denotes treaties with MAP arbitration provisions. (I* denotes treaties to which MAP arbitration provisions under the MLI apply)
- ii. denotes treaties with the USSR that remain applicable until a separate tax treaty is concluded.
- iii. denotes treaties between the countries' representative office in Taipei and the Taipei Economic and Cultural Office in the relevant country.
- iv. denotes treaties that became effective within the last five years.
- v. denotes treaties that are awaiting ratification.
- vi. denotes MAP provisions identical to para 3, art 25 of the OECD Model Convention with respect to Taxes on Income and on Capital.
- vii. arbitration is to be conducted under the statutes of the ECJ.
- viii. arbitration is to be conducted under the statutes of the ICJ.

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