

Ukraine adopts new procedure on advance pricing agreements for transfer pricing purposes

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A new procedure applicable to advance pricing agreements for transfer pricing purposes, adopted by the Cabinet of Ministers of Ukraine on October 28, will become effective in Ukraine on January 1, 2022. The government developed the procedure (adopted by Resolution #1114) in pursuance of the amendments to the Ukrainian tax code introduced by Law 466-IX and in force since May 2020.

The tax code has included rules enabling advance pricing agreements between taxpayers and tax authorities since the introduction of the transfer pricing rules into the Ukrainian tax landscape in 2013. However, Ukraine has yet to see a successful agreement on advance pricing for transfer pricing control purposes. Taxpayers are cautious in applying for this opportunity, which entails massive disclosure of sensitive tax-related information to the tax authorities.

Likely due to this lack of successful advance pricing cases, the government makes periodic overhauls of the regulations. And the current version of the rules provides for several visible improvements, although it still contains major flaws.

The procedure contains a clear statement that any information, documents, or materials, obtained by the tax office at any stage of the advance agreement process cannot be disclosed or promulgated. Moreover, such data cannot be used in any tax control measures including in transfer pricing audits.

The procedure also clarifies the rules of engaging foreign tax authorities under the agreement, which should be done according to the relevant double tax treaty between Ukraine and the state of the respective tax authority.

According to the procedure, taxpayers have the right to apply for preparatory consideration of the advance pricing agreement by the state tax service. This is a kind of probing stage, during which taxpayers can discuss with the tax officers their transfer pricing situation and their vision of the probable approach to the agreement.

The procedure stipulates clear timelines for the tax authorities. Namely, the tax office has 10 workdays from the application to invite the taxpayer for preparatory consideration. The result of the consideration must be provided within 60 calendar days following the application.

The result does not require the taxpayer or the tax authority to follow through with other steps of the process and sign the advance pricing agreement.

The full-fledged procedure for an advance pricing agreement is significantly more complex and lengthier. Yet, even in this case, the procedure tries to set some timelines for avoiding delays by the tax officers. For instance, the tax authority must conduct the first joint discussion within 30 calendar days following the application.



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The procedure provides the tax authority with significant rights during consideration of the application that are similar to the rights during transfer pricing audits. Such rights include information requests, visiting and reviewing the taxpayer’s premises, and questioning of the taxpayer’s personnel.

If it is necessary, the tax authority, upon consent of the taxpayer, has the right to engage independent experts. The taxpayer must cover the costs.

The procedure may result in either the tax authority’s refusal to enter an agreement or its readiness to do so.

The advance pricing agreement is concluded for up to five years. However, such an advance pricing agreement may not provide a lot of benefits to the taxpayer in terms of predictability. The procedure establishes that concluded advance pricing agreement may be amended, among other things, in the event of changes in legislation that impact the transfer pricing matters of the taxpayer. Considering almost annual changes of the transfer pricing rules in Ukraine, the discussion of amendments to the advance pricing agreement may become a periodic and burdensome exercise for the taxpayer.

Moreover, the tax authority has the right to terminate the agreement, for instance, in cases in which it believes that the taxpayer has acted not in line with the advance pricing agreement. According to the procedure, such termination is retroactive, i.e., effective from the day that the agreement took effect. Hence, in cases of such termination, the agreement will not provide any protection for the taxpayer.

Last but not least, the taxpayer will have to annually file a report on its performance of the advance pricing agreement. And this report does not substitute for regular transfer pricing reporting. Thus, entering the agreement, if the taxpayer succeeds, will bring more compliance efforts for the future, not less.

These rules can hardly be viewed as friendly to taxpayers. Rather, they signal a lack of trust on the tax administrators’ part.

In this situation, it is likely that we will still have to wait for the first advance pricing agreement to finally happen in Ukraine.

At the same time, the preparatory consideration of the application for advance pricing agreement, as established by the procedure, may be a potentially interesting instrument for the management of transfer pricing–driven risks in Ukraine. It may allow understanding the position of the tax authority towards the transfer pricing methodology and pricing applied by the taxpayer and improve it when necessary. Hence it may be recommended to pay attention to this new opportunity.

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