On 24 September the Russian government submitted to the State Duma Draft Law No. 1025680-7 “On Amendments to Part One of the Tax Code of the Russian Federation with a View to Improving Tax Control in Relation to Prices and the Procedure for the Conclusion of a Pricing Agreement for Taxation Purposes”.

The bill underwent a public consultation process in January-March 2020, as EY reported in its Tax Messenger dated 12 March 2020. It has now been modified and proposes the following key amendments to the Russian Tax Code:

1. Adjustments to the conditions for recognising transactions as controlled, particularly with regard to transactions between related parties with the involvement of a commission agent/other agent;

2. Amendments to the process of the conclusion of an advance pricing agreement (APA), including: (1) the granting of the right, when concluding an APA with the involvement of a competent authority of a foreign state, to apply pricing methods used in that foreign state as well as those laid down in the Russian Tax Code; (2) an extension of the time allowed to consider a taxpayer’s application and documents when concluding APAs for cross-border transactions; (3) expansion of the range of grounds for refusing to conclude an APA, et al.;
3. Changes to tax control procedures relating to transactions between related parties. 

These amendments are presented below in the form of a comparison between the version of the bill that was published for public consultation (“January version of the TP amendments”) and the version submitted to the State Duma (“September version of the TP amendments”).

<table>
<thead>
<tr>
<th>Current law</th>
<th>January version of the TP amendments</th>
<th>September version of the TP amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cross-border transactions involving global exchange traded products are recognised as controlled transactions (subject to certain special considerations).</td>
<td>The condition that the transacted items must be global exchange traded goods is excluded. Cross-border transactions involving goods belonging to one or more product groups specified in clause 5 of Article 105.14 of the Tax Code would be classed as controlled.</td>
<td></td>
</tr>
<tr>
<td>No corresponding provision in the Tax Code.</td>
<td>In determining the amount of income from transactions for the purpose of treating them as controlled, it is proposed that a calculated amount of income from such transactions, determined using the accrual method, should be used if the recipient of income from the transactions does not calculate profits tax in accordance with the Tax Code.</td>
<td></td>
</tr>
<tr>
<td>No corresponding provision in the Tax Code.</td>
<td>Transactions with the involvement of a commission agent/other agent acting in its own name but on behalf of the client/principal would be equated with transactions concluded directly between the client/principal and the third party, disregarding the involvement of the commission agent/other agent, for the purposes of determining the thresholds for treating the transactions as controlled.</td>
<td></td>
</tr>
</tbody>
</table>

2. Process of the conclusion of an APA

Amendments regarding the process of the conclusion of an APA form the largest part of the bill. Some of these remain unchanged relative to the January version of the bill.

<table>
<thead>
<tr>
<th>Current law</th>
<th>January version of the TP amendments</th>
<th>September version of the TP amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td>No corresponding provision in the Tax Code.</td>
<td>It will be permitted to apply transfer pricing methods in line with the rules prescribed by the law of a foreign state. It is proposed in this regard to introduce a definition of comparability that reflects the effect on the tax base and amounts of taxes payable.</td>
<td></td>
</tr>
<tr>
<td>No corresponding provision in the Tax Code.</td>
<td>An APA for a foreign trade transaction would be based on mutual agreement between the Federal Tax Service and the competent authority of a foreign state reached as a result of a mutual agreement procedure conducted in accordance with a double taxation treaty to which Russia is a party.</td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Details</td>
<td></td>
</tr>
<tr>
<td>-------------</td>
<td>---------</td>
<td></td>
</tr>
<tr>
<td>No corresponding provision in the Tax Code.</td>
<td>If, on the date on which a taxpayer submits an application to conclude an APA, a similar application for the conclusion of the APA has not yet been submitted to the competent authority of the foreign state of which the taxpayer's counterparty is a resident, once the counterparty has submitted that application the taxpayer must notify the tax authorities of that fact in writing. The relevant information must be submitted by the taxpayer not later than six months from the date on which it submitted the APA application.</td>
<td></td>
</tr>
<tr>
<td>Time limit for considering APA applications</td>
<td>The time limit for the consideration of applications and other documents submitted by a taxpayer for the conclusion of an APA is 6 months, or up to 24 months for foreign trade transactions (extendable to 9 and 27 months respectively).</td>
<td></td>
</tr>
<tr>
<td>No corresponding provision in the Tax Code.</td>
<td>If the Federal Tax Service decides that a draft agreement requires modification, the modified draft APA and documents relating to the controlled transaction(s) must be submitted by the taxpayer not later than 30 days after receiving that decision.</td>
<td></td>
</tr>
</tbody>
</table>
| No corresponding provisions in the Tax Code. | Further grounds for denying an APA application have been added, namely:  
- failure to reach mutual agreement with the competent authority of a foreign state;  
- failure to submit information in the manner and within the time limits prescribed by the Tax Code;  
- disagreement of the taxpayer with a decision requiring modification of the draft APA (including failure to submit a modified draft APA on time);  
- disagreement of the taxpayer with a decision to conclude an APA, manifested in the taxpayer’s refusal to sign the APA (including failure by the taxpayer or its representative to appear at the Federal Tax Service to assign the APA). |
| No corresponding provision in the Tax Code. | If a decision is made to refuse to conclude an APA owing to a failure to reach mutual agreement with the competent authority of a foreign state, the taxpayer may, within three months of receiving that decision, resubmit the draft APA for a cross-border transaction to the Federal Tax Service, in the manner prescribed for the resubmission of an APA, without the involvement of the competent authority of the foreign state. |

It is important to note that the provisions contained in the January version of the TP amendments allowing for an APA to be amended or terminated early on the initiative of the Federal Tax Service if this is necessary to ensure compliance with the arm's length principle have been excluded from the September draft. This will increase the stability of agreements and make them more attractive for taxpayers.
<table>
<thead>
<tr>
<th>Current law</th>
<th>January version of the TP amendments</th>
<th>September version of the TP amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td>No corresponding provision in the Tax Code.</td>
<td>An APA may be amended on the initiative of the Federal Tax Service if the amendment of the APA is necessary to ensure compliance with the arm’s length principle. Where the amendment of an APA is initiated by the Federal Tax Service, the taxpayer must submit a draft of the amended APA and relevant documents not later than 30 days after receiving the Tax Service’s reasoned request to amend the APA.</td>
<td>Excluded from the text of the bill</td>
</tr>
</tbody>
</table>
| No corresponding provision in the Tax Code. | The grounds for the early termination of an APA by decision of the director (deputy director) of the Federal Tax Service are:  
- a violation of the APA by the taxpayer during its effective term that has resulted in the underpayment of taxes or an increase in the amount of losses and was discovered in the course of a TP audit;  
- a refusal by a taxpayer to amend the APA on the initiative of the Federal Tax Service (including failure by the taxpayer to submit a draft of the amended APA and relevant documents, where such refusal may result or has resulted in non-compliance with the arm’s length principle).  
An APA may also be terminated early by agreement between the parties or by decision of a court. | Excluded from the text of the bill |

In addition, some provisions of the January version of the TP amendments have been retained in the September draft but with additions regarding the time limits for carrying out the procedural acts to which they refer.

<table>
<thead>
<tr>
<th>Current law</th>
<th>January version of the TP amendments</th>
<th>September version of the TP amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td>No corresponding provision in the Tax Code.</td>
<td>Where a taxpayer has applied for the conclusion of an APA in relation to controlled transactions, the tax authority cannot initiate a TP audit in</td>
<td>The following provision is introduced in addition to what was proposed in January 2020: the time limit within</td>
</tr>
</tbody>
</table>
relation to those transactions until it has made a decision on the APA application. If the tax authority makes a reasoned decision to refuse to conclude an APA, a decision to conduct an audit in relation to the controlled transactions may be issued not later than 2 years from the date of the refusal decision, and the audit may cover transactions occurring over the 5 calendar years preceding the year in which the decision to conduct the audit is made.

which a decision to conduct an audit may be made will be suspended if the taxpayer appeals to a court against the refusal decision.

No corresponding provision in the Tax Code.

When an application to conclude an APA is being considered, if a tax authority requests documents not specifically mentioned in the Tax Code the taxpayer must provide those documents within 10 days of receiving the request.

The following provision is introduced in addition to what was proposed in January 2020: if a notification is received from the taxpayer to the effect that it is unable to submit documents within the specified time limit, the tax authority may extend that time limit.

The September version of the TP amendments also contains a number of new provisions that were not in place in the January draft. In particular:

- it is proposed to introduce a requirement for taxpayers to retain financial and tax records for transactions that are the subject of an APA for 6 years in the case of unilateral agreements or for 10 years in the case of bilateral and multilateral agreements.

- a paragraph is appended to clause 1 of Article 105.21 of the Tax Code allowing for an APA concluded on the basis of a repeat application from a taxpayer to cover the period from 1 January of the year in which the taxpayer filed an APA application that was denied owing to a failure to reach mutual agreement with the competent authority of a foreign state.

3. Amendments regarding tax control procedures

This block of amendments is virtually unchanged from the January version of the draft. As before, territorial tax authorities have the right to send notices of controlled transactions not included in notifications that have been identified not only as a result of a tax audit or tax monitoring, but also as a result of a pre-audit tax risk assessment.

However, under the September version of the TP amendments, the time allowed for documents/information to be submitted by transaction parties and other persons possessing documents/information is reduced from 30 days (as stated in the January draft) to 10 days. At the same time, the tax authority will have the right to extend that period if the person from whom documents/information are requested sends a notification to the effect that it is unable to comply with the request on time.

When will the new provisions take effect?

If the bill is passed, the corresponding law will enter into force from 1 January 2021 (but not earlier than one month after its official publication), and its provisions will apply to transactions for which revenues and/or expenses are recognised on or after 1 January 2021 in accordance with Chapter 25 of the Tax Code.
What does it mean for taxpayers?

It appears that one of the most awaited bills of the last few years may indeed be passed before the end of this eventful year.

In addition to establishing a clearer mechanism for monitoring compliance with transfer pricing rules in relation to cross-border transactions, including via the conclusion of advance pricing agreements, mainly bilateral and multilateral, the bill encourages the adoption of rules regarding the conduct of mutual agreement procedures. Those rules form the framework for Russian competent authorities to liaise with their foreign counterparts on both transfer pricing and other international taxation matters. This opens up broad opportunities for Russian taxpayers in terms of greater transparency and predictability in the tax treatment of cross-border transactions and the elimination of double taxation through dialogue involving the competent tax authorities of the states concerned.

It will be seen from the above that this important bill has changed substantially since the beginning of the year as a result of active discussions. However, it is possible that even more significant changes will be made following discussions within the walls of the State Duma.

For example, the bill submitted to the State Duma still does not allow for an APA (1) to be concluded in relation to a planned transaction that is not underway at the time the agreement is concluded, but will be concluded in the future, (2) to cover a later period than up to the beginning of the year in which the APA application was submitted, which would be in keeping with international practice and would be of great benefit to the business community.

EY’s experts are closely monitoring the evolution of the bill, are involved in the discussions surrounding its provisions and would be happy to elucidate the contents of the bill and the implications for your business if and when it is passed, as well as to discuss your ideas for improvements to the bill.

Author:
Evgenia Veter

For more information, contact the authors of this publication:

Evgenia Veter
+7 (495) 660 4880
evgenia.veter@ru.ey.com
Inquiries may be directed to one of the following executives:

**Moscow**

**CIS Tax & Law Leader**
- Irina Bykhovskaya: +7 (495) 755 9886

**Oil & Gas, Power & Utilities**
- Alexei Ryabov: +7 (495) 641 2913
- Marina Belyakova: +7 (495) 755 9948

**Financial Services**
- Irina Bykhovskaya: +7 (495) 755 9886
- Alexei Kuznetsov: +7 (495) 755 9687
- Maria Frolova: +7 (495) 641 2997
- Ivan Sychev: +7 (495) 755 9795

**Advanced Manufacturing & Mobility**
- Andrei Sulin: +7 (495) 755 9743

**Consumer Products & Retail, Life Sciences & Healthcare**
- Dmitry Khalilov: +7 (495) 755 9757

**Real Estate, Hospitality & Construction, Infrastructure, Transportation**
- Anna Strelnichenko: +7 (495) 705 9744

**Technology, Telecommunications, Media & Entertainment; Tax Performance Advisory**
- Ivan Rodionov: +7 (495) 755 9719

**Tax Technology**
- Andrei Ignatov: +7 (495) 755 9694

**People Advisory Services**
- Ekaterina Ukhova: +7 (495) 641 2932
- Gueladjo Dicko: +7 (495) 755 9961
- Sergei Makeev: +7 (495) 755 9707

**Private Client Services**
- Anton Ionov: +7 (495) 755 9747
- Dmitri Babiner: +7 (812) 703 7839

**Customs & Indirect Tax**
- Vadim Ilyin: +7 (495) 648 9670

**International Tax and Transaction Services**
- Yuri Nechuyatov: +7 (495) 664 7884
- Vladimir Zhetonogov: +7 (495) 705 9737

**Transfer Pricing and Operating Model Effectiveness**
- Evgenia Veter: +7 (495) 660 4880
- Maxim Maximov: +7 (495) 662 9317

**Tax Policy & Controversy**
- Alexandra Lobova: +7 (495) 705 9730
- Alexei Nesterenko: +7 (495) 622 9319

**Global Compliance and Reporting**
- Yulia Timonina: +7 (495) 755 9838
- Alexei Malenkin: +7 (495) 755 9898

**Law**
- Georgy Kovalenko: +7 (495) 287 6511
- Alexey Markov: +7 (495) 641 2965
- Pavel Koutovoi: +7 (495) 664 7899

**St. Petersburg**
- Dmitri Babiner: +7 (812) 703 7839

**Vladivostok**
- Alexey Erokhin: +7 (914) 727 1174

**Ekaterinburg**
- Irina Borodina: +7 (343) 378 4900

**Krasnodar**
- Alexei Malenkin: +7 (495) 755 9898
- Alexei Nesterenko: +7 (495) 622 9319

For information about Foreign Countries Business centers in EY Moscow office please follow the link.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

© 2020 Ernst & Young Valuation and Advisory Services LLC

http://www.ey.com/
EY

Assurance | Tax | Transactions | Advisory

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY works together with companies across the CIS and assists them in realizing their business goals. 5,500 professionals work at 19 CIS offices (in Moscow, Ekaterinburg, Kazan, Krasnodar, Novosibirsk, Rostov-on-Don, St. Petersburg, Tbilisi, Vladivostok, Almaty, Atyrau, Nur-Sultan, Baku, Bishkek, Kyiv, Minsk, Tashkent, Tbilisi, Yerevan).

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

Contacts

Almaty  +7 (727) 258 5960  Novosibirsk  +7 (383) 211 9007
Atyrau  +7 (7122) 55 2100  Nur-Sultan  +7 (7172) 58 0400
Baku  +994 (12) 490 7020  Rostov-on-Don  +7 (863) 261 8400
Bishkek  +996 (312) 665 997  St. Petersburg  +7 (812) 703 7800
Ekaterinburg  +7 (343) 378 4900  Tashkent  +998 (78) 140 6482
Kazan  +7 (843) 567 3333  Tbilisi  +995 (32) 215 8811
Kyiv  +380 (44) 490 3000  Togliatti  +7 (8482) 99 9777
Krasnodar  +7 (861) 210 1212  Vladivostok  +7 (423) 265 8383
Minsk  +375 (17) 240 4242  Yerevan  +374 (10) 500 790
Moscow  +7 (495) 755 9700

© 2020 Ernst & Young Valuation and Advisory Services LLC
All Rights Reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.