

# GENERAL INSTRUCTIONS FOR THE ADVANCE PRICING AGREEMENT PROCEDURE

## 1. GENERAL

### 1.1 Purpose

These guidelines concern the process of Advance Pricing Agreement ("APA") based on current legislation to facilitate businesses in handling these cases and to clarify their rights, obligations and duties during the procedure aiming to achieve agreement.

The Greek tax authorities have put in place the APA procedure in order to resolve in advance transfer pricing issues arising between companies and tax authorities in different countries and to avoid double taxation.

APAs aim at providing greater security for businesses and greater efficiency in tax audits. Using this process, Greek tax authorities follow the usual practice of the majority of developed countries, as recommended by the OECD.

The above apply equally to the distribution of profits between a domestic company and its permanent establishment abroad, as well as the profits of permanent establishments of foreign enterprises located in Greece.

### 1.2 The term "APA", definition, legal basis

As defined internationally, APA is an agreement between one or more taxpayers and one or more tax administrations. It establishes, ahead-of-time, i.e. before the controlled transactions between related entities in different countries take place, a methodology for determining transfer pricing over a fixed period of time according to the "arm's length principle". In addition, further criteria may be

agreed to determine intra-group prices, e.g. comparative data to be used and ways of updating them throughout the APA-covered period, critical assumptions about future conditions, etc.

In the case of unilateral APAs, the parties involved in the process are the applicant enterprise and the Directorate of Audits of the General Directorate of Tax Administration of the Independent Authority for Public Revenue as "competent authority". In the case of bilateral or multilateral APAs, the parties involved in the consultation are the "competent authorities" of the States concerned and not the applicant or its related enterprise, which may or may not accept the APA.

The unilateral APA does not eliminate the possibility of double taxation and, as such, is not recommended. However, in cases where there is no Double Taxation Convention with a country, the Directorate of Audits may issue to the taxpayer, on request, a decision of unilateral approval for transfer pricing if it is appropriate and if there is a legitimate interest. If the taxpayer concludes unilateral APA with another country in accordance with its legislation, without the involvement of Greek tax authorities, the Greek tax authorities are not bound by it.

## 2. Procedure – Steps

The tax administration proposes filing an application for preliminary consultation before the APA official application. At this stage, there is an opportunity to discuss the benefits that may be derived from the conclusion of an APA, the information needed to analyse the intra-company business pricing policy, to make a timetable for the works and to discuss in general all issues relating to procedure for examining the application.

2.1 The taxpayer must propose a transfer pricing method and provide all the commercial, industrial, economic and legal information required to support its claim that the method it proposes leads to pricing in accordance with the arm's length principle.

The fact that the taxpayer is subject to tax audit should not be an obstacle to the submission of an APA application covering future transactions. Accordingly, the submission of the APA application does not in any way cause the tax audit or the certification procedure for previous tax years to be suspended.

The APA application is filed by the taxpayer with the relevant department of the Directorate of Audits of the Independent Authority for Public Revenue with notification to the International Economic Relations Directorate. At the same time an application shall be made to the other State concerned and a copy of said application shall be filed, at the latest within one month from submission, to the competent department.

The taxpayer must provide all information required to support its application. The relevant documents must be submitted in a mutually agreed format and in any case also in the Greek language.

2.2 The procedure for APA requires cooperation between the enterprise and the tax administration. Both sides should discuss the methodology of determining transfer prices and transactions under consideration. Meetings are held at a technical level so that the taxpayer presents the documents required for the analysis of the relevant transactions and justifies the method it intends to use.

During the examination of the application, the tax administration must analyse the method proposed by the taxpayer together with the competent authority of the other State involved in the parallel consultations conducted between them.

Employees of the relevant department of the Directorate of Audits who are reviewing the application may, with the company's consent, make on-site visits to the premises of the company to determine its operating conditions.

While the application is being considered, the enterprise informs the competent department about the progress of the procedure with the other involved foreign authorities and provides them with the same documents as it has submitted to said authorities.

The tax administration must have access to all relevant documents in order to be able to make out the entity's transfer pricing policy. In addition to providing the documents required to analyse the methodology, the taxpayer may need to provide any data, accounting or not, that can assist the employees examining the application, such as:

- Information on prices, indicators of comparable non-controlled transactions,

- If there is no data available for similar non-controlled transactions, propose the necessary adjustments to make them comparable.

If there are no comparable data available, the enterprise must demonstrate that the method specified below complies with the arm's length principle.

2.3 The proposed method of defining transfer prices concerns future transactions that may be affected by changes in the business or the general economic environment. These changes may have an impact on the parameters of the agreement at the time of future transactions.

For this reason, critical assumptions, i.e. thresholds or parameters deemed to be capable of jeopardizing the validity of the APA, must be proposed, making it necessary to revise it or to cancel it for the remaining duration. Critical assumptions should be analysed in detail during the consultation.

If the enterprise deems it appropriate, it may submit a technical report by an expert (on economic, financial or other matters) to support the suitability of the method chosen. The tax administration reserves the right to require more information, such as analyses and reports, which it considers useful for considering the chosen method. Any information requested in writing by the tax administration must be submitted without delay.

2.4 The company cannot invoke confidentiality of information as a reason to refuse to produce a document. The tax administration undertakes not to disclose the information received to any third party other than the competent authority of the other Contracting State and to comply with the confidentiality rules.

When the tax administration completes the assessment of the application, it informs the enterprise and the competent authority of the other State concerned of its positions in order to start consultations between the tax authorities.

The Tax Administration informs the taxpayer of the progress of the discussions. If, after these consultations, the competent authority of the other State concerned comes to the conclusion that it does not wish to conclude an APA, the procedure shall be terminated and the taxpayer shall be informed thereof.

2.5 When the Greek tax administration and the competent authority of the other State concerned reach an agreement, it shall be communicated to the enterprise by a confidential document. In case the enterprise accepts the content of the document, it signs a statement of approval.

3. Within twenty days of signing the statement, the tax administration issues the APA decision.

4. The APA shall enter into force on the date agreed by the parties concerned. Its duration may not exceed four years. The validity of the APA decision may not refer to a tax year that has elapsed at the time of the submission of the APA application.

5. The enterprise's obligations are set out in the APA decision. The enterprise is required to prepare and submit an annual compliance report to the competent department of the Directorate of Audits. The purpose of this report is to demonstrate that the provisions of the APA have been met. If the compliance report is not submitted, the APA decision will be canceled from the tax year to which it relates.

6. The department of the Directorate of Audits is competent to examine the applications for APA and issue the relevant decisions, so all applications, any additional information requested and the annual compliance report must be filed with it.

For any information regarding the APA procedure, please contact:

Independent Authority for Public Revenue

General Directorate of Tax Administration

Directorate of Audits

Department D'

10, Karagiorgi Servias Str., 10184 Athens

Tel.: 2103375219

E-mail: [d.eleg4@aade.gr](mailto:d.eleg4@aade.gr)