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Transfer Pricing
Advance Pricing
Agreements



Advance Pricing Agreements

Introduction

As previously announced in our [Transfer Pricing News No. 1](#) and [Transfer Pricing News No. 2](#), the Ministry of Finance has published in the Official Gazette no. 31/2015, dated 6.03.2015, the Instruction no. 9, dated 27.02.2015 "On Advance Pricing Agreements", entering into force on 6.03.2015.

Below we have provided answers to the most common questions asked on Advance Pricing Agreements.

Frequently Asked Questions

1. What is an Advance Pricing Agreement?

An Advance Pricing Agreement (APA) is a procedural agreement between one or more taxpayers and one or more tax authorities that aims to avoid any transfer pricing disputes, by determining in advance a set of criteria to apply, within a specified period of time, for specific cross-border controlled transactions, to ensure their consistence with the market principle.

It does not intend to determine the taxable profits or the revenue to be taxed in Albania, but the criteria for their assessment (e.g. the most appropriate transfer pricing method).

2. Which transactions are subject of an APA?

Cross-border controlled transactions with associated parties (not domestic transactions).

3. What are the benefits of an APA for a company?

The main benefit provided by an APA to a taxpayer is the reduction of risks of revaluations by transfer pricing audits, by determining in advance the methodology that will be applied to assess the tax base in line with the market principle.

4. What are the different types of APAs?

- Unilateral APA - entered between a taxpayer and the General Tax Directorate (GTD);
- Bilateral APA - whereby a taxpayer requests that the GTD enters into an agreement with a foreign tax administration, under the 'mutual agreement' provisions of the respective Double Tax Treaty (DTT);
- Multilateral APA - whereby a taxpayer requests that the GTD enters into an agreement with two or more foreign tax administrations, under

the 'mutual agreement' provisions of the respective DTTs.

In case there is a DTT in place, applications shall be filed for bilateral or multilateral APAs. Unilateral filings for APAs will be taken into consideration by the GTD only in special occasions (e.g. when the foreign tax administration does not accept to enter into negotiations).

5. Who is eligible to apply for an APA?

Any taxpayer whose cross-border controlled transactions for the entire period under the coverage of the APA (maximum 5 years) will exceed in total the value of 30 million Euro (approximately 4.2 milliard ALL). If the controlled transactions are not expected to exceed this amount, GTD might still accept the request, provided that the case is sufficiently complex or it is highly important in commercial and economic terms for Albania.

6. What is the maximum period of time covered by an APA?

The maximum period of time covered by an APA is 5 years. The commencement date for the APA shall be the tax year that follows the date of signature and conclusion of the APA.

7. Can there be a 'roll-back' of the concluded APA to cover past open years (which are not yet audited for transfer pricing)?

No. APAs cover only prospective years and they cannot be required for certain prior years (commonly referred as 'roll-back years'). However, to the extent that the APA is signed and concluded after the first year of the proposed APA term, the proposed commencement tax year will still be covered under the APA.

8. What is the APA process in Albania?

Phase 1 – Pre-filing meeting

The purpose of such preliminary meeting is to allow all the parties involved to assess the success of the proposed APA. A pre-filing meeting is requested by officially submitting to the General Tax Directorate a 'Pre-filing Questionnaire' included in Appendix 2 of the Instruction. Taxpayers have the option of applying for a pre-filing meeting on an anonymous basis if sufficient information is provided by the taxpayer or their representative as part of the Pre-filing Questionnaire in Appendix 2. The meeting shall be arranged within 60 days from the submission of the request by the taxpayer.

In case the application for an APA has been accepted, the GTD officially informs the taxpayer within 60 days from the meeting. Otherwise, in case the application for an APA has not been accepted, the GTD officially

informs the taxpayer within 30 days, along with the respective reasons of such decision.

Phase 2 – Formal application

The filing of an application is carried out by submitting the information required under Appendix 3 of the Instruction. If the request is for bilateral or multilateral APA, the taxpayer should submit the APA application at the same time to the competent authorities of all relevant foreign tax jurisdictions.

The GTD will acknowledge in writing acceptance or not of the formal APA application within 60 days from its receipt. The acceptance of the APA application at this phase does not suggest with certainty that the GTD and the taxpayer will conclude an APA, and does not ensure that the proposed method will be ultimately used. It signifies that the GTD will undertake the evaluation procedures. Otherwise, in case the APA application is rejected, the GTD will state the reasons for rejection in its acknowledgment letter.

Phase 3 – Evaluation

Within 60 days following the acceptance of the APA application, GTD carries out a critical analysis of the application. During this phase, the GTD may undertake the following activities as part of the analysis: request additional information, meet with the taxpayer and discuss specific issues, undertake field research and site visits to inspect the taxpayer's operations, etc.

In case the GTD makes an evaluation different from the one included in the application filed by the taxpayer, it shall discuss it with the taxpayer with the purpose of reaching a mutual agreement.

When the application is bilateral or multilateral, the taxpayer shall inform the GTD on the information/documentation required by the homologue tax authorities and must ensure that GTD is properly equipped with copies of the entire information/documentation provided to them by the taxpayer or the associated parties.

Phase 4 – Negotiation

Unilateral APA

Within 10 days after concluding the relevant internal analysis, the GTD shall inform the taxpayer in relation to their position regarding the application. In case of differences between the respective positions, the taxpayer shall submit in written form its arguments in relation to the proposed transfer pricing method and other criteria proposed. If differences still persist, GTD will enable the taxpayer to discuss the issues raised in a formal meeting with the aim of reaching an agreement within 15 days.

Bilateral and multilateral APA

The GTD is expected to enter into a process of information exchange with the tax administration/competent authority of the other party's state

involved in the APA. The taxpayer does not have the right of access to the information contained in the exchange of communication between the tax administrations and moreover, the taxpayer cannot be part of the negotiations. The GTD will accordingly keep the taxpayer informed in relation to the progress of the negotiations and the timeframe agreed with the other state's competent authority. This mutual agreement process shall take a maximum of 90 days.

The taxpayer has the right to accept or refuse the mutual agreement reached between the competent authorities by informing the GTD in written form within 30 days.

In cases when GTD is not able to reach a mutual agreement with the partner/s (other contracting states), a unilateral APA can be concluded with the taxpayer.

Phase 5 – Drafting and agreement

Once agreed, GTD drafts the final version of the APA and sends it to the taxpayer for signature and execution. The taxpayer sends back to GTD a signed copy within 10 days.

9. In summary, what is the timeframe of every stage until the conclusion of an APA?

Phase 1 – Pre-filing meeting: 90 - 150 days

Phase 2 – Formal application: 60 days

Phase 3 – Evaluation: 60 days

Phase 4 – Negotiation: 40 - more than 90 days

Phase 5 – Drafting and agreement: not specified

In summary, the APA negotiation process may take from less than 250 days to more than 360 days.

10. What are the fees for filing an APA application?

Filing of an application is subject to a non-refundable fee of 50,000 ALL (approximately 360 Euro).

Before the start of Phase 2, the taxpayer should pay the following administrative fees:

- a) For unilateral APAs: 300,000 ALL (approximately 2,140 Euro),
- b) For bilateral APAs: 1,200,000 ALL (approximately 8,570 Euro),
- c) For multilateral APAs: 1,200,000 ALL (approximately 8,570 Euro).

If the GTD rejects the application of the taxpayer after the conclusion of Phases 2 and 3, 90% of the administrative fee will be refunded to the taxpayer within 30 days of such rejection. If the application is accepted and Phase 4 is initiated, the administrative fee will not be refunded under any circumstances.

11. What are the annual compliance obligations of the taxpayer once an APA is agreed and entered into force?

The taxpayer is obliged to submit to the GTD a completed APA Annual

Compliance Notice, within 31st March of the following year for each of the tax periods covered by the APA. The form and content of the APA Annual Compliance Notice is specified in Appendix 4 of the Instruction. If the taxpayer fails to submit the APA Annual Compliance Notice, the GTD may cancel the APA.

12. What if there is a change to the facts and conditions based on which the APA was first concluded?

The taxpayer should inform GTD through an official letter when a critical assumption of the APA is breached and should submit supporting documentation together with a proposed course of action (e.g. revision of the APA) to address such breach. Critical assumptions include every fact concerning the taxpayer, a subsidiary, a third party, an industry, or the general economic conditions, including those which are not under the control of the taxpayer or the GTD, such that their breach would significantly affect the implementation of the APA or the grounds based on which it has been concluded.

13. Will the tax authorities conduct transfer pricing audits at the taxpayer throughout the APA term?

The tax authorities may audit a taxpayer that has entered into an APA, as part of their regular tax audits. However, for the transactions covered by the APA, the purpose of the audit shall be limited to compliance with the provisions of the APA.

14. Can an APA be revised, cancelled, revoked, or renewed?

Yes, the GTD can either:

a) Revise an APA if:

- there is a material change in the implementation of the Albanian Tax Legislation;
- both, the taxpayer and the GTD express, in writing, a desire to revise the APA due to changes in the economy or other relevant considerations;

b) Cancel an APA if:

- there has been a misrepresentation, mistake or omission made by the taxpayer during the APA application, negotiation or when complying with reporting and compliance requirements (including the filing of the APA Annual Compliance Notice), but such failure was not attributable to neglect, carelessness or willful default of the taxpayer;
- the taxpayer has failed to comply with one or more provisions of the APA;
- there is a material change to one or more critical assumptions;
- a revision of the APA was possible but could not be agreed and concluded within a period of 60 days;

The cancellation of an APA is effective from and including the tax year in which the event (that led to cancellation) occurred.

c) Revoke an APA when there has been a distortion, error, or omission

which is the result of negligence, carelessness, or intentional evasion of the taxpayer when completing the application, during negotiations, or when complying with reporting requirements.

The effect of such revocation is the same as no agreement has ever existed.

d) Renew an APA, if the taxpayer and the GTD follow the same procedures outlined above concerning a new APA.

Deloitte Contacts

Olindo Shehu, CPA
Partner
Deloitte Albania
oshehu@deloittece.com

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