

Contacts:

Eftichia Piligou
Head of Transfer Pricing,
Greece
epiligou@deloitte.gr

Maria Trakadi
Tax Managing Partner,
Greece
mtrakadi@deloitte.gr

Greece Issues Templates and Guidelines for APA Negotiations



TP ALERT 2014-022
3 November 2014

In an effort to provide taxpayers with an integrated procedural framework for the negotiation of advance pricing agreements (APAs), the Greek Ministry of Finance on 16 October 2014 released template application forms for both preliminary consultations and formal negotiations, as well as additional guidelines on the overall APA procedure.

The forms and guidelines are available (in Greek) at the ministry's website: <http://www.publicrevenue.gr/kpi/public/archive/1161>.

Application Form for Preliminary Consultation

Based on the template the ministry released, the Application for Preliminary Consultation, which is optional for taxpayers, must include the following data:

- The applicant's data (name, tax identification number, and supervising tax office);
- The type of advance pricing agreement requested -- unilateral, bilateral, or multilateral -- with specific reasoning when a unilateral APA is requested;
- The period during which the requested APA will apply;
- Proposed date(s) of the preliminary consultation meetings with the tax authorities; and
- Information regarding the persons that will represent the taxpayer at the consultation.

In addition, the applicant must attach to the application (or make available during the preliminary meeting) other necessary data, including:

- Organizational/legal/functional structure of the group;
- Data of the related parties involved in the transactions covered by the APA;
- A brief description of the taxpayer's business model; and
- A brief description of the activities and transactions concerned with reference to the contribution of each party involved and an estimation of the transactions' total value.

Furthermore, the application must include:

- A functional and risk analysis of each party involved in the transactions;
- Copies of the underlying agreements;
- A copy of the tax audit report, if the transactions were audited for previous fiscal years and an act of assessment was issued;
- The proposed method for pricing the aforementioned transactions, and why the proposed method is the most appropriate one;

- Critical assumptions on which the application of the above pricing method is based;
- The criteria to be used in the comparable search process and any relevant adjustments to achieve greater comparability;
- The mechanism for performing price adjustments to comply with the arm's length principle; and
- Reference to any APAs that have been concluded by any of the related parties, either in Greece or abroad, for the same or similar transactions.

The filing of the application for preliminary consultation requires the payment of a fee of €1,000. A copy of a document evidencing payment should [must?] be attached to the form.

Application form for the official negotiations

Based on the template the ministry released, the application form for official APA negotiations requires, to a great extent, similar information to that submitted for the preliminary consultation. This form, however, calls for a more detailed analysis of the most significant aspects of the application.

This application must include:

- The applicant's data (name, tax identification number, and supervising tax office);
- The type of APA requested -- unilateral, bilateral, or multilateral;
- If the application requests a bilateral or multilateral APA, whether an application has already been filed with the pertinent foreign tax authorities, and if so, the date of filing or the estimated date of filing;
- The name of the related parties involved in the transactions covered by the APA;
- The period for which the requested APA will apply; and
- Information regarding the persons that will represent the taxpayer at the consultation.

Additionally, the taxpayer should attach to the application information that is also required for the preliminary consultation, such as the structure of the group, the data of the related parties involved in transactions, a presentation of the taxpayer's business model, as well as the following information:

- A detailed description of the activities and transactions covered by the application with reference to the contribution of each party involved and an estimate of the total value of those transactions;
- Reference to the taxpayer's other transaction flows (in terms of volume and price) that may have an impact on the pricing of the transactions concerned;
- An industry and market trends analysis;
- A comparative analysis that includes, in addition to a detailed analysis of the taxpayer's functions, assets, and risks, the business strategies of the parties involved, copies of the statutory auditor's reports for the last three years, the pertinent financial statements, copies of the corporate income tax returns for the last three years, as well as a copy of the tax audit report for prior years (in case the transactions concerned also existed in prior years). In addition, the application should include financial data for the transactions concerned for the last three years per product line, unit, and geographic region, copies of relevant market studies (if available), and copies of the relevant agreements (if available).
- Analysis of the taxpayer's transfer pricing policy, which includes the proposed transfer pricing method and a detailed reasoning for its selection, criteria for selecting comparable data and adjustments proposed to achieve comparability, critical assumptions on which the proposed method is based, the mechanism for applying the proposed methodology, and the intercompany pricing policies and practices used by the taxpayer and related parties to the transactions covered by the APA for the last three years.

The filing of the APA application requires a fee of €5,000 for unilateral APAs and €10,000 per country involved in the case of bilateral or multilateral APAs. A copy of a document evidencing payment should (must?) be attached to the form.

General guidelines

The guidelines are further proof of the importance the Greek tax authorities accord to the newly introduced procedure for APA negotiations. APAs are defined in the guidelines as agreements between one or more taxpayers and tax administrations (unilateral, bilateral, or multilateral APA) whose aim is the advance discussion of the pricing of intercompany transactions, so that compliance with the arm's length principle is achieved and double taxation is avoided. The objective is to provide taxpayers, through the APA, with greater certainty as to their transfer pricing positions and to render the audits performed by the tax authorities more efficient.

The guidelines discourage to some extent the use of unilateral APAs, because they do not eliminate the risk of double taxation, especially if there is no income tax treaty between Greece and the other contracting party's country of residence. The guidelines also stress that a unilateral APA concluded with a foreign tax authority is not binding on the Greek tax authorities.

The guidelines also clarify that in case a bilateral or multilateral APA is required, the parties involved in the negotiation are only the tax authorities of the countries involved, not the taxpayer or its related parties; the latter are notified only of the final outcome of the negotiations between the tax authorities, and they may either accept or reject the proposed agreement.

The guidelines recommend strongly that taxpayers take advantage of the preliminary consultation phase, because it gives both the taxpayer and the tax administration the chance to discuss in a less formal manner the potential benefits, the steps to be followed, and the elements needed for the conclusion of the APA and the relevant timetable. The guidelines also clarify that data submitted during the preliminary consultation phase need not be submitted again for the official negotiations.

The fact that a taxpayer may be under tax audit does not prevent it from applying for an APA, because the procedure applies only to future transactions. Moreover, the filing of an APA application will not suspend a tax audit that is already in progress.

As regards the purely procedural part, an APA application is filed with the Directorate of Audits of the Ministry of Finance (General Secretary of Public Revenue), copying also the Directorate of International Economic Affairs. In the case of a bilateral or multilateral APA, a corresponding application should be submitted to the foreign tax authorities and a copy of this filing should be submitted to the Greek tax authorities within one month. All supporting data for the application should be submitted in a mutually agreed format, and in the Greek language.

In the case of bilateral or multilateral APAs, the Greek tax authorities will inform the taxpayer on the progress of the negotiations. If the foreign tax authorities reject the application, the process is terminated and the taxpayer is notified. If the tax authorities reach an agreement, the taxpayer is notified accordingly and is asked to sign an APA acceptance letter, if it agrees with the outcome of the negotiations. The Greek tax administration will issue a decision on the APA application within 20 days from the signing of the acceptance letter.

The guidelines emphasize that the APA procedure requires cooperation between the taxpayer and the tax administration. In this context, and in order for the tax authority to evaluate the proposed transfer pricing policy, it should have access to all relevant data and information (of an accounting nature or otherwise). Furthermore, the guidelines grant the officers of the Directorate of Audits the right to visit the taxpayer's premises, with its consent, to verify its operating conditions.

The taxpayer may not invoke the confidential nature of a requested document as a reason for not providing it to the tax authorities. The tax administration is bound by the rules of confidentiality and cannot disclose the information received to any third party, except for the tax authorities of the other countries involved in the APA procedure.

The APA is valid from the date agreed to by the parties involved, and its duration cannot exceed four years. The APA cannot apply to a fiscal year preceding the date of the application. Following conclusion of the APA, the taxpayer is obligated to submit an annual compliance report demonstrating that it has complied with the terms of the APA. If the annual compliance report is not filed, the APA is cancelled from the fiscal year for which no annual report was filed and onwards.

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