



Transfer Pricing

Our services on managing uncertainty and transfer pricing controversy

The challenges

In the current international tax environment that has followed the implementation of the OECD/G20 Base Erosion and Profit Shifting (BEPS) project, taxpayers are confronted with increased uncertainty about the tax treatment of their intra-group transactions and increased scrutiny by tax authorities in the form of tax audits and potential adjustments.

In view of the more aggressive tax audit environment, taxpayers need to consider solutions to manage tax risks and options how to resolve tax controversies. One tool to mitigate such risks are bi- or multilateral Advanced Pricing Agreements (APAs), i.e., an arrangement with two or more tax authorities to obtain certainty on the tax treatment of certain intra-group transactions covered under the APA.

Bi- and multilateral APAs are a new tool for taxpayers in Luxembourg where the focus in the past has been primarily on unilateral APAs or rulings. Although there is no formal bi- or multilateral APA regime in place, the Luxembourg tax authorities (LTA) are willing to entertain applications for bi-

“Tackling tax uncertainty in the international context can be particularly important.”

Tax Certainty, IMF/OECD Report for the G20 Finance Ministers

or multilateral APAs under the framework of Article 25 on Mutual Agreement Procedures of the respective tax treaty and Circular no 60 issued by the LTA on 28 August 2017.

Under a bi- or multilateral APA, the tax authorities of the respective countries agree on the characterization and transfer pricing methodology to be applied to the intra-group transactions covered under the APA and not to adjust or audit the transfer pricing for a fixed period as long as the critical assumptions of the APA are met. Such APAs are an especially useful risk mitigation tool for complex or high-risk intra-group transactions as well as restructurings. Bi- and multilateral APAs are also endorsed as best practice in Action Plan 14 of the BEPS project.

Luxembourg regime

Luxembourg typically offers a maximum APA period of 5 years after which the APA could be renewed assuming that the underlying facts and circumstances have not materially changed.

The transactions to be covered under the APA must adhere to the arm's length principle and not be tax driven. Among other requirements, an application for a bi- or multilateral APA must include a detailed description of all intra-group transactions to be covered, as well as a transfer pricing documentation in line with the OECD Transfer Pricing Guidelines, which includes functional and economic analyses. The LTA proposes an optional pre-filing meeting with a purpose to discuss tax issues related to the transactions intended to be covered by the bi- or multilateral APA.

How Deloitte can support

Deloitte has critical experience of working with taxpayers and the LTA on facilitating bilateral APAs with other jurisdictions on complex transfer pricing transactions and restructuring.

Deloitte can support you throughout the entire bi- or multilateral APA application procedure, namely:

- Development of APA strategy and cost-benefit analysis;
- Design of transfer pricing position for the APA application;
- Management of pre-filing meeting and subsequent meetings with tax authorities;
- Preparation of the APA application including economic analysis;
- Coordination with tax authorities to ensure a smooth APA application and negotiation process;
- Provide analytical capabilities to respond to questions from tax authorities;
- Coordination with the Deloitte office in the respective foreign jurisdictions;
- Negotiations with the tax authorities; and

Annual monitoring and compliance during the bilateral APA's validity period.

Your advantage

We are distinct in our multi-disciplinary and collaborative model and the value that model brings to our clients. We take time to understand the needs and expectations of our clients and develop a pragmatic solution that considers the strategic, operational, regulatory and tax imperatives of your business.

By adding the necessary industry expertise and our experienced people, we understand our clients' most challenging business issues and how to solve them.

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