



In this issue:

I. OECD Forum on Tax Administration - Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements

The Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements was issued by OECD Forum on Tax Administration on February 1st, 2023 as a guide to multilateral Mutual Agreement Procedures and Advance Pricing Arrangements processes and how they could function, providing tax administrations and taxpayers with basic information on the operation of such procedures and suggesting different approaches based on the existing practices of jurisdictions, but without imposing a set of binding rules.

II. Ordinance no. 16/2023 for the amendment and completion of the Tax Procedure Code

The ordinance aims to transpose COUNCIL DIRECTIVE (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation ("DAC 7")

I. OECD Forum on Tax Administration - Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements

As agreed during the inaugural Tax Certainty Day on September 16, 2019, Multilateral Mutual Agreement Procedures (“MAPs”) and Advance Pricing Arrangements (“APAs”) offer greater tax certainty to both taxpayers and tax administrations where different parts of the same transaction or arrangement involving a multinational enterprise are covered by multiple bilateral tax treaties. However, most jurisdictions have limited experience in coordinating bilateral MAP and APA cases to offer multilateral certainty.

Taking into account the above, and in pursuance to the Tax Certainty Agenda following the March 2019 plenary meeting of the Forum on Tax Administration, a focus group on “Exploring potential for wider use of multilateral MAP and multilateral APA” was established at the end of 2019. The focus group consisted of 19 jurisdictions: Australia, Austria, Canada, China, Colombia, France, Germany, India, Ireland, Italy, Japan, Netherlands, Norway, Poland, Singapore, Spain, Thailand, the United Kingdom and the United States.

In April 2020, a survey was circulated to focus group members that contained an outline of the legal basis for multilateral MAP and APA cases as well as the process for handling these cases. Based on the responses received, the Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements (“the Manual”) was prepared to provide guidance to jurisdictions on the handling and resolving of multilateral MAP or APA cases.

The manual provides general guidance in relation to the following subjects:

- **Basis for handling multilateral MAP and APA cases:**
 - guidance on the definition of a multilateral case, the legal basis for handling multilateral cases, the request filed to the competent authorities in multilateral cases and the connection between access to multilateral procedures and the BEPS Action 14 minimum standard that seeks to improve the resolution of tax-related disputes between jurisdictions.
- **Procedural aspects to consider in multilateral cases:**
 - guidance on approaching the other jurisdictions involved and possible approaches to discussions, the coordination of procedural matters between the competent authorities involved and the taxpayer, the modalities of discussions, the interaction of available domestic remedies or procedures with multilateral cases, the implementation of mutual agreements arising from these cases, arbitration where there is no MAP agreement, as well as the rights and the obligations and role of the taxpayer.
- **Examples of multilateral cases:**
 - Representative and simplified examples of transactions that would generally benefit from multilateral solutions.
- **Ideal timeline for a typical multilateral case:**
 - indicative timelines for each step of a multilateral MAP or APA case in line with the guidance provided in the Manual (the illustrative target timeframe of agreement between the competent authorities both for multilateral MAP and APA cases is of approximately 36 months from the receipt of MAP request, where all necessary information has been provided).

Through the general guidance offered in the above mentioned areas, the Manual allows tax administrations to explore whether implementation of these procedures is appropriate considering the circumstances of their own MAP and APA programmes, and also outlines the actions and cooperation expected from taxpayers to allow tax administrations to consider MAP and APA cases multilaterally. The Manual does not impose a set of binding rules upon jurisdictions, but allows them to consider whether the guidance may be incorporated in their domestic guidance on MAP or APA processes to provide additional clarity.

In light of the above, and given that Romania was not part of the focus group, the Manual can represent a general guidance of good practices that can provide additional clarity on the operation of multilateral MAP and APA procedures, based on the existing practices of other jurisdictions.

II. [Ordinance no. 16/2023 for the amendment and completion of Law no. 207/2015 regarding the Tax Procedure Code](#)

The main topics covered by this Ordinance are as follows:

- Regarding the reporting obligation of the financial institutions to provide information on the financial accounts of non-resident taxpayers, ANAF may carry out checks and audits at these institutions to establish whether they have been complied with the diligence procedures and reporting requirements provided in Annexes 1 and 2 and the compliance procedures set out in Annex 1 to the FATCA Agreement, such as monitoring institutions where undocumented accounts are reported.
- Reporting obligation of the financial institutions to provide within 45 days from the request of ANAF, certain information and documents related to tax due diligence and reporting procedures, as well as evidence in support of them
- Definition of certain terms, such as: information available, joint audit, data breach, foreseeable relevance, etc.
- Presentation of the categories of income and capital of non-residents that can be submitted by the competent authority in Romania within the mandatory automatic exchange of information
- Obligation the Romanian competent authority to provide the European Commission with annual statistics on automatic exchanges volume as well as relevant information on the administrative and other costs and benefits related to the exchange that has taken place
- Platform operators obligations regarding the diligence procedures and reporting requirements, with the first deadline being 31 January 2024 for reportable matters arising during 2023.
- Possibility for member states' authorities to perform joint audit
- Information on data protection
- Introduction of fines and sanctions. Thus, the main sanctions are in connection with the failure to comply the reporting requirements by the Platform Operators. At the same time, the Ordinance provides sanctions also for not meet the reporting deadlines, incorrect reporting, etc. The fines are ranging from 2,000 lei to 100,000 lei, depending on the findings.

[For more details, please do not hesitate to contact us.](#)



Alexandra Bunea-Oprîșescu
Director, Transfer Pricing
Deloitte Tax
abuneaoprisescu@deloittece.com



Andreea Mereu
Manager, Transfer Pricing
Deloitte Tax
amereu@deloittece.com



Alexandra Smedoiu
Partner, Corporate Tax
Deloitte Tax
asmedoiu@deloittece.com



Gabriel Patru
Manager, Corporate Tax
Deloitte Tax
andpatru@deloittece.com

Deloitte.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see www.deloitte.com/ro/about to learn more about our global network of member firms.

Deloitte provides audit, consulting, legal, financial advisory, risk advisory, tax and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries and territories bringing world-class capabilities, insights, and high-quality service to address clients' most complex business challenges. To learn more about how Deloitte's approximately 244,000 professionals make an impact that matters, please connect with us on Facebook or LinkedIn.

Reff & Associates SCA is a law firm member of Bucharest Bar, independent in accordance with the Bar rules and represents Deloitte Legal in Romania. Deloitte Legal means the legal practices of Deloitte Touche Tohmatsu Limited member firms or their affiliates that provide legal services. Visit the global Deloitte Legal website <http://www.deloitte.com/deloittelegal> to see which services Deloitte Legal offers in a particular country.

This alert is offered as guidance and must not be considered a consultancy service. Before taking any action based on this document, you should ask for professional fiscal/legal advisory.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte Network”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional advisor. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.