

UNOFFICIAL TRANSLATION

DECISION No POL. 1284/31.12.2013

Procedures for the conclusion, revision, revocation and annulment of Advance Pricing Agreements. Specific content of the related application, relevant fees, consultation with the competent authorities of other countries involved, form and content of Tax Administration decisions, as well as any related issue regarding the application of provisions of article 22 of Law 4174/2013.

(Official Gazette B´ 3366/31-12-2013)

THE GENERAL SECRETARY FOR PUBLIC REVENUE OF MINISTRY OF FINANCE

Having regard to:

- a) The provisions of article 22 of the Code of Tax Procedure (Law 4174/2013, Official Gazette A 170), as in force.
- b) The provisions of articles 50 and 51 of the Income Tax Code, (Law 4172/2013, Official Gazette A 167), as in force.
- c) The provisions of sections c, d and f of article 2 of the Income Tax Code, as in force.
- d) The provisions of subparagraph E2 of Law 4093/2012 regarding the appointment of General Secretary for Public Revenue (Official Gazette 222A - 12/11/2012).
- e) The act of the Council of Ministers No. 1 of 16/01/2013, "Selection and appointment of a General Secretary for Public Revenue"
- f) The fact that this decision does not cause any expenses to the State budget, we decide:

Advance Pricing Agreement (APA)

The related parties, within the meaning of section g´, article 2 of the Income Tax Code, permanent establishments of a foreign legal person in Greece regarding their transactions with the head office, as well as with the related parties to their head office abroad, and domestic legal persons with permanent establishments abroad, may file an application with the General Secretary for Public Revenue for an advance pricing agreement as to specific future cross-border transactions with related parties.

Subject of the Advance Pricing Agreement

The subject of the agreement is the appropriate set of criteria used for the determination of transfer pricing during a specific time period. These criteria mainly include the method used for documentation, comparable data or reference data and the related adjustments, as well as the critical assumptions about future conditions. Any other special issue concerning the pricing of transactions with related parties may also be the subject of such an agreement.

Competent Authority

The competent authority for the receipt and examination of applications for advance pricing agreements is the Directorate of Audits of the General Directorate of Tax Audits and Collection of Public Revenue.

Preliminary stage

1. Before the official filing of the application, the person concerned may request a preliminary consultation, in order to assess the possibilities for acceptance of the application. For this purpose, a special application is submitted to the Directorate of Audits, which sets a date for a preliminary meeting.
2. During the preliminary meeting, the person concerned provides all the information which, in its judgement, allows the competent authority to make an assessment as to the admissibility of the application, based on documentation. This information should include, at least, the related activities and transactions, the parties concerned, the proposed transfer pricing method, the desired duration of the advance pricing agreement, as well as the countries involved.
3. During the preliminary stage, the person concerned and the competent authority hold discussions regarding the documentation which should be included in the official application.

The competent authority provides informally, to the extent possible, a clear indication as to the possibilities for acceptance of the subsequent official application of the person concerned, highlights the points which may be disputed and makes proposals for the content of this application.

4. The discussions held during the preliminary stage are not binding for either of the parties. The information provided during the preliminary meeting is covered by tax secrecy.

Filing of the Application

1. The application for an advance pricing agreement is submitted to the Directorate of Audits of the General Directorate of Tax Audits and Collection of Public Revenue of the General Secretariat for Public Revenue, and notified to the Directorate of International Economic Relations of the Ministry of Finance.

2. In case the procedure described in the previous article has taken place, the application is submitted within thirty (30) days from the preliminary consultation.

Content of the Application

1. The official application for an advance pricing agreement should include at least:

a. The applicant's data (name, address, Tax Identification Number, contact details).

b. The data of all related parties, including all the permanent establishments involved in the requested advance pricing agreement.

c. The structure of the group, which shows all the persons participating in the activities covered by the requested advance pricing agreement.

d. Description of the intra-group transactions for the pricing of which the advance pricing agreement is requested.

e. The proposed method for the pricing of the above transactions.

f. The critical assumptions on which the application is based.

g. Detailed analysis of the reasons for which the applicant considers that the proposed method is appropriate for the pricing of the above transactions in order to be in accordance with the arm's length principle.

h. The time period for which the advance pricing agreement is requested.

i. If the applicant wishes so, a request for consultation between the competent authority and the competent tax authorities of other countries involved, with which there is a Double Taxation Agreement. In such a case, applications must also be submitted to the tax authorities of the other countries involved, including the same data.

2. In the official application, the applicant should include all the related necessary data, in order for the competent authority to evaluate the application and form an opinion regarding the method which will be used for the calculation of prices based on the arm's length principle.

3. The submitted data, which are expected to vary depending on the circumstances of the case, are separated into two categories:

a. Data concerning the past (historical data), which may be already available in various forms.

b. Data whose creation may become necessary, especially for the advance pricing agreement.

4. Indicatively, the submitted data may include the following:

a. An analysis of industry and market trends, which are expected to affect the business activities, any commercial exploitation studies or economic studies for the business activities, which lead to these expected results.

b. A brief description of the business strategy which is to be implemented during the time period related to the advance pricing agreement, as well as of the strategy in previous periods if different. This description may include projections used for future business plans, budgets, information regarding the anticipated business prospects and competition, as well as the future strategy concerning marketing, production or research and development.

c. A functional analysis of the parties related to the application for an advance pricing agreement. All the activities related to the transactions covered by the advance pricing agreement (research and development, production, distribution, marketing, type of service provided, etc.) must be described. The risks which will be encountered by each entity in the context of the transactions covered by the advance pricing agreement must also be described and evaluated. Common risks could be related to products, technology, technological obsolescence, market, credit or exchange rate risks and legal risks. There must also be a reference to the amount and type of

working capital and the tangible or intangible assets which will be used in the transactions related to the advance pricing agreement.

d. The reasons for which the applicant considers that the advance pricing agreement is appropriate for the specific transactions.

e. Detailed data on the proposed method and evidence that this method is in accordance with the arm's length principle.

f. A list of the advance pricing agreements which have already been concluded by any related parties involved in the application, either in Greece or abroad, concerning the same or relevant transactions.

g. Detailed financial data of all parties involved in the application, for the last three (3) years.

h. A list of agreements which have been concluded between related parties, as well as a brief description thereof, which affect the transactions covered by the application for an advance pricing agreement.

Critical assumptions

1. The application for an advance pricing agreement must refer to the assumptions on which the proposed method is based, in terms of being in accordance with the arm's length principle. "Critical assumptions" means the functional, legal or economic characteristics of the applicant, a specific sector or activity, or generally the economic circumstances, which constitute a prerequisite for the advance pricing agreement.

2. The critical assumptions must be based, to the extent possible, on verifiable, reliable and independent data.

3. The critical assumptions are defined on the basis of the special conditions related to the applicant, the commercial environment, the type and methods for the determination of prices of intra-group transactions.

4. The critical assumptions should not be too narrowly defined, but they should be based on an adequate range of data so that the applicant's compliance with the advance pricing agreement is not made difficult.

Evaluation of the Application

1. The Directorate of Audits under the General Directorate for Tax Audits and Collection of Public Revenue, with the assistance of the Directorate of Income Taxation where necessary, evaluates the application by examining the submitted data, the critical assumptions and the applicant's requests, and formulates its opinions regarding the terms and conditions of the advance pricing agreement.

2. The Directorate of Audits has the right to request additional data from the applicant, as well as any necessary clarification or information, setting a reasonable deadline for their submission. Likewise, the applicant may submit additional data voluntarily throughout the whole procedure.

3. The Directorate of Audits may also request, through the competent authority designated for that purpose, any necessary information from foreign authorities based on the procedure for the exchange of information, as provided by international conventions.

4. In case that the application includes a request for consultation with the competent tax authorities of other countries involved, the Directorate of Audits conducts consultations with these authorities in the context of the application, based on the mutual agreement procedure under the applicable Double Taxation Agreement. The official exchange of opinions takes place in the form of an exchange of position papers between the competent authorities.

5. During the evaluation stage, informal contacts may take place between the Directorate of Audits and the applicant, if this is considered necessary by the Directorate.

Position Paper

1. When the evaluation of the application is completed, the Directorate of Audits prepares a Position Paper, which summarizes its conclusion and suggestions.

2. The Position Paper referred in the previous paragraph is notified to the applicant and, in case that consultations take place with foreign authorities according to paragraph 4 of the previous article, it is notified also to the competent tax authorities of the countries involved.

3. In summary form, the Position Paper includes:

- a. The conclusion of the competent authority accompanied by a brief justification, which should refer to the proposed method and the rationale for that choice.
- b. The reasons for any rejection or amendment of the method initially chosen by the applicant.
- c. The main facts on which the conclusion of the authority is based. If necessary, a special reference must be made to any facts which were not mentioned in the initial application, but came to the knowledge of the authority during the evaluation process.
- d. Data regarding the critical assumptions on which the potential advance pricing agreement is based.
- e. Assessment regarding the duration of the potential advance pricing agreement.
- f. Suggestions regarding the way of monitoring the implementation of the potential advance pricing agreement.
- g. Brief reference to the applicable provisions of the national legislation and the bilateral double taxation agreements.

Setting a date for the final meeting

1. A date for a meeting with the applicant is set within ten (10) days from the preparation of the position paper referred to in the previous article.
2. In case that consultation with foreign tax authorities is needed according to paragraph 4, article 8 of this decision, the deadline referred in the previous paragraph starts from the completion of the procedure with all countries involved.
3. The applicant is requested to attend with a special invitation, which is notified to it at least twenty (20) days prior to the meeting. The invitation is notified together with the position paper.

Final meeting

1. During the above meeting, the opinions and proposals of the applicant and the competent authority are discussed in order to reach a consensus on the content of the advance pricing agreement.

2. The applicant attends the meeting through its legal representative or a duly authorized person. For proof of this authorization, a public or private power of attorney is required, in which the signature must be authenticated by the competent authority according to law. This power of attorney is submitted to the Directorate of Audits up until the day of the meeting.

3. If the opinions of the competent authority and the applicant coincide, Minutes on the Acceptance of an Advance Pricing Agreement are drafted and signed by the parties involved in the procedure.

4. If the opinions of the competent authority and the applicant do not coincide or if the applicant does not attend the meeting which has been set for the examination of its application, Minutes on the Rejection of an Advance Pricing Agreement are drafted.

Decision on the Advance Pricing Agreement

1. Within twenty (20) days from the meeting referred in the previous article and based on the Minutes drafted during that meeting, the competent authority issues the decision on the application for an advance pricing agreement, which is notified to the applicant together with a copy of these Minutes.

2. The decision referred in the previous paragraph includes at least the following:

a. The applicant's data

b. Description of the intra-group transactions related to the decision.

c. The data of the related parties with which the transactions covered by the decision will be conducted.

d. The judgement of the competent authority on the acceptance or rejection of the application for an advance pricing agreement.

3. If the application is accepted, in addition to what is specified in the previous paragraph, the above decision includes at least the following:

a. The duration of the advance pricing agreement and the date of its entry into force.

b. Detailed data regarding the acceptable method for the pricing of the intra-group transactions covered by the decision.

c. The critical assumptions which must be taken into consideration for the implementation of the agreement, as well as an acceptable deviation margin as to the critical assumptions, if necessary.

d. Documentation which must be maintained throughout the duration of the agreement, in order to enable the monitoring of its implementation.

e. If necessary, potential facts or circumstances which will require the revision of the advance pricing agreement.

f. If necessary, potential facts or circumstances which will lead to an early or even retrospective termination of the advance pricing agreement.

4. The duration of the stages of evaluation and issuance of the relevant decision cannot exceed a hundred and twenty (120) days from the submission of the application for an advance pricing agreement. In case of consultation with foreign authorities, the above time limit is not taken into consideration.

5. The duration of the advance pricing agreement cannot exceed four (4) years.

6. The validity of the advance pricing agreement cannot concern a tax year which has elapsed prior to submission of the application for an advance pricing agreement.

Obligations of the applicant following the advance pricing agreement

The applicant is required to prepare and submit an annual report on compliance with the terms and conditions of the advance pricing agreement for the relevant tax year. This report should include the information necessary to prove that the critical assumptions have been met and it should expressly indicate any possible deviation.

If, according to the report, the critical assumptions have not been met, then the taxpayer should submit proposals for any relevant adjustments to be made.

In this context, any additional questions asked by the Directorate of Audits should be answered by the taxpayer immediately. The report must be

submitted to the Directorate of Audits until the legal deadline for filing tax returns for that tax year.

In case of non-submission of the compliance report, the advance pricing agreement is cancelled as from the tax year which that compliance report concerns.

Revision of the advance pricing agreement at the request of the person concerned or ex officio by the General Secretary for Public Revenue

Regarding the submission, the evaluation and the issuance of a decision on the revision application by the person concerned or ex officio by the General Secretary for Public Revenue in the cases specified in paragraph 5, article 22 of Law No. 4174/2013, the provisions of articles 5 to 12 of this decision apply accordingly.

Revocation or cancellation of the advance pricing agreement

1. Regarding the revocation or cancellation of the advance pricing agreement, the competent authority prepares a Special Report on its opinions, which is notified to the person concerned.
2. A meeting between the competent authority and the person concerned is set up, in order to discuss the revocation or the cancellation of the advance pricing agreement.
3. The person concerned is requested to attend the meeting with a special invitation, which is notified to it at least ten (10) days prior to the meeting.
4. Within thirty (30) days from the meeting, the General Secretary issues the decision on the revocation or the cancellation, which is notified to the person concerned.
5. The decision referred in the previous paragraph includes a brief justification and, in the case of cancellation, it determines the date from which it takes effect.
6. In the case of revocation, the decision is considered to have never been issued.

Fees

In order for the operating expenses of the competent authorities to be covered, the applicant must pay the following fees:

- a. A fee amounting to a thousand (1.000) euros, upon submission of the application for preliminary consultation.
- b. A fee amounting to five thousand (5.000) euros, upon submission of the application for an advance pricing agreement.
- c. In case of a request for consultation with foreign tax authorities, a fee amounting to ten thousand (10.000) euros for the consultations with each country involved.

Entry into force

This decision applies to cross-border intra-group transactions carried out in tax years starting from 1 January 2014 onwards.

This decision shall be published in the Official Gazette.

Athens, 31 December 2013

The General Secretary for Public Revenue

Theocharis Theocharis