

## **UNOFFICIAL TRANSLATION**

**DECISION**No. POL. 1049

(Official Gazette B 1235/7 April 2017)

### **“Regulation of issues relating to the Mutual Agreement Procedure in accordance with bilateral Conventions for the Avoidance of Double Taxation”**

#### **THE GOVERNOR OF THE INDEPENDENT AUTHORITY**

#### **FOR PUBLIC REVENUE**

Having regard to:

1. The provisions on the mutual agreement procedure of the Conventions for the Avoidance of Double Taxation of Income, concluded by Greece, as such Conventions are listed in the attached annex, which constitutes an integral part of this decision.
2. The provisions of Law 4174/2013, in particular Article 41 par. 4, 45 par. 2 section i) and 63A of the Code of Tax Procedure (Law 4174/2013, Official Gazette A 170), as in force.
3. The provisions of Chapter A “Establishment of an Independent Authority for Public Revenue” in Part One of Law 4389/2016 “Emergency provisions on the implementation of the agreement on fiscal objectives and structural reforms and other provisions” (Official Gazette A 94), in particular Articles 1, 2, 13, 14, 17 and 41, as in force.
4. The provisions of the first Article paragraph E subparagraph E2 of Law 4093/2012 (Official Gazette A 222), as in force, on the establishment of the position of the Secretary General for Public Revenue, in combination with the provisions of Article 13 paragraph 1 and Article 41 paragraph 10 of Law 4389/2016, as in force.
5. The act of the Council of Ministers No. 1/20 January 2016 (Official Gazette 18/Y.O.Δ.Δ./20 January 2016) “Selection and appointment of a Secretary General at the General Secretariat for Public Revenue of the Ministry of Finance”, in combination with the provisions of Article 41 par. 10 of Law 4389/2016, as in force.

6. The provisions of Article 4 of Law 4174/2013, in particular the provisions of paragraph 1 thereof, which authorize the Secretary General for Public Revenue to delegate competencies and assign his duties to Tax Administration bodies, in combination with the provisions of Article 41 par. 3 (b) of Law 4389/2016, as in force.

7. The decision No. Δ6Α 1036682 ΕΞ2014/25 February 2014 (Official Gazette B 478 and 558) of the Secretary General for Public Revenue at the Ministry of Finance, on the subject of “Delegation of competencies and power of signature ‘By mandate of the Secretary General for Public Revenue’ to Tax Administration bodies”, as in force, in combination with the provisions of Article 41 par. 3 (b) of Law 4389/2016, as in force.

8. The decision No. ΟΠΓ. Α 1036960 ΕΞ 2017/10 March 2017 (Official Gazette B 968) of the Governor of the Independent Authority for Public Revenue, on the subject “Organization of the Independent Authority for Public Revenue (IAPR)”.

The fact that this decision does not causes any expenses to the State Budget.WE DECIDE

### Article 1 **Object and scope**

1. This decision regulates issues governing the Mutual Agreement Procedure (hereinafter, MAP), pursuant to the provisions of the Double Taxation Conventions (hereinafter, DTCs) that have been ratified by Greece and are in force. A detailed list of the DTCs is attached as an annex hereto.

2. The initiation of the MAP is subject to the submission of a request by the persons defined in the respective provisions of the DTCs. Where a person considers that the acts of one or both Contracting States result or will result for him in taxation not in accordance with the provisions of the applicable DTC, such person may, irrespective of the remedies provided by the domestic legislation of the Contracting States, present his case to the competent authority of the Contracting State, of which he is a resident. In case that the taxpayer has transferred afterwards his tax residence to the other Contracting State, the request has to be submitted to the State, of which he was a resident in the year that the taxation not in accordance with the provisions of the DTC has occurred. In case that the request for a MAP concerns the implementation of the non-discrimination provisions of the applicable DTC, the person shall

submit the above request to the competent authority of the Contracting Party, of which he is a national.

### **Competent authority**

1. The competent authority for the submission, the assessment of requests and the conduct of the MAP on the basis of the provisions of the DTCs, except for the requests referring to transfer pricing, is the Tax Affairs Section of the International Economic Relations Directorate of the Independent Authority for Public Revenue (hereinafter, IAPR).

2. The competent authority for the submission, the assessment of requests and the conduct of the MAP concerning exclusively the elimination of double taxation in connection with the adjustment of profits of associated enterprises on the basis of the respective Articles of the DTCs (Article 9 of OECD Model Tax Convention) is the Special Audits Section of the Directorate of Audits, General Directorate of Tax Administration of the IAPR. In this case, a copy of the request shall be notified by the applicant at the same time to the Tax Affairs Section of the International Economic Relations Directorate of the IAPR.

3. Upon receiving the request, the competent authority shall assess at first the timeliness and admissibility of the request, as well as whether it contains the minimum information required, as specified in Article 4 herein. The competent authority, after completing the assessment of the request, shall endeavour, if it considers the request justified and cannot itself arrive at a satisfactory solution for avoiding taxation not in accordance with the provisions of the applicable DTC, to resolve the dispute through a mutual agreement with the competent authority of the other Contracting State, in order to avoid taxation not in accordance with the provisions of the applicable DTC. To this end, the competent authority shall promptly notify the case to the other Contracting State and inform the applicant on the initiation of the MAP.

### **Timeliness and admissibility of the request - Statute of limitations**

1. A request is considered as timely, when it is submitted to the competent authority within the two-year or three-year time limit specified in the applicable DTC provisions, from the notification of the tax assessment act not in accordance with the provisions of the applicable DTC. In case that the DTC does not specify a time limit for submitting the request, a three-year time limit shall apply, subject to reciprocity.

2. The request for a MAP shall be admissible only if it refers to taxation not in accordance with the applicable DTC provisions.

3. In case that the request is not submitted timely or does not meet the admissibility requirements or in case that the minimum necessary information is not supplied by the applicant within the time limit provided for in Article 5 par. 3 or in case that the years, to which the request refers are statute barred at the time of submission of the request, in accordance with the applicable domestic legislation, the competent authority shall reject the request, informing the applicant in writing, and the MAP shall be concluded. If there is ground for rejection due to the statute of limitations and the request refers to more than one year, the request shall be admissible only for the years which have not become statute barred.

### **Content of the request**

1. The request shall be submitted in writing in the Greek language. The minimum information and documents to be submitted with the request for initiation of the MAP are the following:

(a) Identification of the applicant: name/company name, postal address, tax identification number (TIN), contact details and, in transfer pricing cases, the details both of the enterprise submitting the request and the details of the other associated parties to the relevant transactions, including all permanent establishments.

(b) Basis for the request: reference to a particular DTC and provisions of the Article(s) thereof, which, according to the applicant, is/are not applied correctly.

(c) Facts and circumstances: Details of the facts and circumstances of the particular case, including the tax year(s) and the tax amount(s) (both in domestic and in foreign currency, if necessary) concerned, as well as any supporting documents. In transfer pricing cases, details of the relations between the enterprise and the other parties to the relevant transactions.

(d) Analysis of the issue to be resolved: an explanation by the applicant of the reasons why he considers that there is a case of double taxation, with an explicit reference to the relevant DTC provisions, and documentation in the Greek language (including copies of the tax audit report, tax assessment acts or equivalent leading to the alleged double taxation). In transfer pricing cases,

detailed description and documentation of the transactions relating to the request for a MAP and the methodology followed for the adjustments.

(e) Whether the request has been also submitted to the competent authority of the other Contracting State; if so, the date of submission of the request, the competent authority to which the request was submitted and a copy of the request and the documents attached thereto.

(f) Details concerning any procedures of administrative appeal, closure, administrative dispute resolution, administrative settlement, judicial complaint and in general litigation procedures, initiated by the applicant or other parties in any of the States involved, with respect to the case of the MAP request, as well as any court decisions relating to the case. If the case is pending before a Greek court and provided that it has not been heard yet, a certificate is required, issued by the Registry of the relevant Court, that the relevant legal remedy has not been considered yet.

(f) If there is no document legitimizing the designation of a legal representative, a signed declaration is required, confirming that the representative has been authorized to act on behalf of the applicant for all issues relating to the request.

(g) A statement of the applicant, which is equivalent to a solemn declaration under Article 8 of Law 1599/1986, confirming the accuracy of all information and documentation provided.

2. The request shall be accompanied by an electronic file contained in an optical disc (CD or USB stick) which shall be submitted to the competent tax authority and shall include the information and documents described in par. 1

(a) - (h) of this Article in magnetic format.

### **Formal assessment of the request**

1. The International Economic Relations Directorate or the Directorate of Audits of the IAPR, as the case may be, shall assess the MAP request, by examining the documents produced as well as the timeliness and admissibility of the request.

2. In any case, the competent authority shall send to the taxpayer a confirmation of receipt of his request within one month from such receipt. The confirmation shall be sent either with a registered letter to the postal address stated by the applicant or via e-mail to his e-mail address.

3. The competent authority shall be entitled to ask from the applicant additional documentation, as well as any necessary information, to be submitted within two months; the two-month period for submission of information may be extended upon the applicant's request. During the entire procedure the applicant may voluntarily submit additional information.

### **Issues related to pending litigation procedures**

1. If a judicial complaint has been filed with a Greek court, this shall not prevent the examination of a MAP request, provided that the case has not been heard at the time of submission of the request. If the case has been heard, the MAP shall be concluded unresolved and the competent authority of the other Contracting State shall be notified accordingly. The taxpayer has to promptly notify the competent authority on the hearing of the case at the court.

2. If a legal remedy has been filed with a Greek court, the competent authority shall not proceed to the examination of the MAP request, unless the applicant produces a certificate issued by the Registry of the Court, before which the legal remedy is pending, that the relevant case has not been heard. The competent authority may require from the applicant to produce a certificate issued by the Registry of the competent Court that the case has not been heard, at any stage of the MAP.

3. In case that the applicant requests a relief as a result of acts of a foreign tax authority, with which he claims that taxation was imposed not in accordance with the provisions of the relevant DTC, his request shall be examined only if these acts have become final abroad and there are no court decisions against such acts in the other Contracting State.

### **Receipt of a request from a foreign authority**

In case that the MAP has been initiated by a foreign competent authority, the Greek competent authority shall request from the foreign competent authority the transmission of the minimum required information and documents, as specified in Article 4 herein.

### **Article 8 Assessment of the request**

1. After completing the formal assessment, the competent authority shall proceed to the substantial assessment of the request, in order to examine whether the request is justified, i.e., whether taxation was imposed not in

accordance with the provisions of the relevant DTC. At this stage, the competent authority may seek the views of the competent tax office, as the case may be.

2. If there is an administrative procedure, such as a tax audit, that has not been concluded, the competent authority shall notify the applicant in writing that the MAP request shall not be examined until the conclusion of such procedure.

3. If it is established that a tax audit for transfer pricing purposes has not been conducted in the associated enterprise in Greece, the General Director for Tax Administration of the IAPR shall instruct the competent tax office to initiate a tax audit, with the order to conduct such audit in priority due to a pending MAP request.

4. The Directorate of Audits of the IAPR, in the framework of examining requests for the initiation of a MAP, may request from the audit services of the IAPR, in which the file of the audited case is kept, all necessary information, including the file itself, if necessary; such audit services are bound to send the information within a reasonable time.

5. The competent authority shall investigate the facts and circumstances and legal issues of the case, taking into consideration the provisions of the domestic legislation and the DTCs, the request for the initiation of a MAP, the information received by the applicant, the findings of any tax audit conducted by the Greek tax authorities, the views of the competent tax office or the working groups of Article 9 par. 6 herein, as well as any other information related with the case.

6. The MAP shall be conducted by the competent authorities of the Contracting States. The applicant shall not be directly involved in the negotiations conducted in the framework of the MAP; his participation shall be restricted in the timely and accurate provision to the competent authorities of all information necessary for the resolution of his case.

### **Consultation between competent authorities - Position paper**

1. A consultation shall follow between the competent authorities by the exchange of papers, stating their positions.

2. In case that the Greek competent authority initiates the MAP, it shall address to the foreign competent authority a position paper, which shall include the

case submitted, the grounds, on which it believes that taxation has occurred or is likely occur not in accordance with the provisions of the respective DTC and a presentation of its proposal for resolving the dispute.

In particular with respect to transfer pricing, the position paper shall include a full justification of the tax assessment or the profit adjustment and shall be accompanied by basic documentation supporting the competent authority's position and a list of all other documents used for the adjustment.

3. The position paper is not notified to the applicant.

4. In case that the Greek competent authority receives a MAP request from a foreign competent authority, it shall reply to the position paper of the foreign authority with a letter, in which it shall state its agreement or disagreement with the views of the foreign authority.

5. The position paper shall be approved, prior to its dispatch, by the Governor of the IAPR.

6. By virtue of a decision of the Governor of the IAPR specific working groups may be established with the participation, as the case may be, besides the International Economic Relations Directorate or the Directorate of Audits, also of other services or a representative of the Legal Council of State, for the purpose of addressing specific issues arising in the framework of the MAP.

### **Outcome of the MAP**

1. The agreement between the Contracting Parties on the elimination of double taxation may be achieved either by the exchange of letters between the competent authorities of the Contracting Parties, including via e-mail, or in the form of a joint document, signed by their competent authorities. The outcome of the consultation on the MAP shall be submitted for approval to the Governor of the IAPR. In case that a Mutual Agreement has been reached, the applicant shall be notified in writing on the outcome of the MAP within one month from the conclusion of the procedure and may accept it within sixty (60) days from the notification. In case that a mutual agreement has been reached between the competent authorities, the applicant or his legal representative, who has to be specifically authorized in this respect, shall be invited to attend a meeting with the Competent Authority, in order to consent or not to the outcome of the final agreement between the competent authorities.

2. If the applicant accepts the Mutual Agreement, a Statement of Acceptance shall be signed by the applicant and the competent authority.

If the applicant does not accept the Mutual Agreement or does not attend the meeting that has been set, a Statement of Rejection of the Mutual Agreement shall be signed. A partial acceptance of the Mutual Agreement by the applicant is not possible, unless the Contracting States have jointly agreed that such a partial acceptance is possible.

3. In case of acceptance of the Mutual Agreement by the applicant, if legal remedies have been filed before a Greek court, the applicant should submit a solemn declaration that he shall produce, prior to the issuance of the Mutual Agreement Decision under Article 11 herein, a true copy of the written declaration, submitted to the Court Registry, of waiver from the writ and the right to file a complaint pertaining to the issues resolved with the Mutual Agreement, in accordance with the provisions of Article 143 of Code of Administrative Court Procedure (Law 2717/1999), even in cases in which the request has been submitted to a foreign competent authority.

4. Following the acceptance or rejection by the applicant, the foreign competent authority shall be notified accordingly. In case of acceptance, the final confirmation documents shall be exchanged.

5. In case that for any reason whatsoever the Contracting Parties do not reach an agreement within the time limit specified in the provisions of the relevant DTC, for DTCs that specify a relevant time limit, the procedure shall be concluded by drawing up a document ascertaining the lack of agreement. Wherever this is provided for in the relevant DTC, the arbitration stage shall follow, upon request of the interested party. In case that arbitration is set in motion, a specific agreement shall be signed by the competent authorities of the Contracting Parties regarding the implementation of the arbitration, on the basis of the sample agreement included in the annex of the Commentary on Article 25 par. 5 of the OECD Model Tax Convention.

### **Mutual Agreement Decision**

1. The competent authority, based on the Statement of Acceptance of the mutual agreement, shall issue, within thirty (30) days from signature thereof and after the declaration of waiver as per Article 10 par. 3 has been produced, a Decision on the mutual agreement, which shall be signed by the Governor of the IAPR. The decision shall be duly notified, along with the copy of the

statement, to all parties involved, as well as to the tax authority that is competent for the enforcement thereof. The Mutual Agreement Decision is not subject to an administrative appeal or any legal remedy whatsoever.

2. The decision of the previous paragraph shall include at least the following:

(a) identification of the applicant (name/company name, TIN, competent tax office, address, details of legal representative); in transfer pricing cases, the details of the connected entities/parties to the examined transactions;

(b) reference to the contents and the date of request;

(c) reference to the Contracting State and the foreign competent authority, with which the Mutual Agreement has been conducted;

(d) a brief reference to the contents of the final document, in which the agreement between the competent authorities of the Contracting States has been formulated;

(e) reference to the Statement of Acceptance of the mutual agreement;

(f) the modalities for the implementation of the agreement;

(g) the fact that it is not subject to an administrative appeal or any legal remedy whatsoever.

3. A separate Decision of the Governor of the IAPR shall be issued for each tax year. It is possible to merge decisions for more than one year into the same document.

### **Confidentiality - publicity**

1. With respect to the information exchanged during the MAP, the provisions on exchange of information of the applicable DTC shall apply, as well as any applicable provisions on professional and tax secrecy.

2. The Mutual Agreement decisions shall be published in the website of the Independent Authority for Public Revenue, by omitting the details of the taxpayer. If the taxpayer disagrees with the publication of the Decision as a whole, a summary thereof shall be published, containing the description of the issue, the other Contracting State, the tax years concerned by the Decision and the legal basis thereof.

## Entry into force

This decision shall apply for mutual agreement requests which are submitted from its publication and thereafter. Any pending mutual agreement requests shall be supplemented in accordance with the provisions of this decision.

This decision shall be published in the Official Gazette.

## THE GOVERNOR OF THE INDEPENDENT AUTHORITY

### FOR PUBLIC REVENUE

### GEORGIOS PITSILIS

## Conventions for the Avoidance of Double Taxation on Income and/or Capital

	Partner	Law	Official Gazette	Date of Signature	Entry into force	Effective from
1	Albania	2755/1999	252/1999	14 July 1995	13 December 2000	1 January 2001
2	Armenia	3014/2002	103/2002	12 May 1999	18 July 2002	1 January 2003
3	Austria (REVISION)	3724/2008	253/2008	18 July 2007	1 April 2009	1 January 2010
4	Azerbaijan	3826/2010	29/2010	16 February 2009	29 September 2010	1 January 2011
5	Belgium (REVISION)	3407/2005	266/2005	25 May 2004	30 December 2005	1 January 2005
6	Bosnia-Herzegovina	3795/2009	157/2009	23 July 2007	12 July 2012	1 January 2013

7	Bulgaria	2255/1994 & Protocol 2927/2001	195/1994 & [Protocol ] 140/2001	15 February 1991	22 January 2002	1 January 2003
8	Canada	3824/2010 & Protocol 4035/2011	27/2010 & [Protocol ] 270/2011	29 June 2009	16 December 2010	1 January 2011
9	China	3331/2005	83/2005	3 June 2002	11 November 2005	1 January 2006
10	Qatar	3823/2010	22/2010	27 October 2008	20 March 2010	1 January 2011
11	Croatia	2653/1998	250/1998	18 October 1996	18 December 1998	1 January 1999
12	Cyprus	573/1968	223/1968	30 March 1968	16 January 1969	1 January 1967
13	Czech Republic	1838/1989	86/1989	23 October 1986	23 May 1989	1 January 1990
14	Denmark	1986/1991	189/1991	18 May 1989	18 January 1992	1 January 1992
15	Egypt	3484/2006	170/2006	27 November 2004	23 August 2006	1 January 2007

16	Estonia	3682/2008	145/2008	4 April 2006	1 August 2008	1 January 2009
17	Finland	1191/1981	206/1981	21 January 1980	4 October 1981	1 January 1982
18	France	4386/1964	192/1964 & 77/1965	21 August 1963	31 December 1964	31 January 1965
19	Germany	52/1967	134/1967	18 April 1966	9 December 1967	1 January 1964
20	Georgia	3045/2002	198/2002	10 May 1999	20 October 2002	1 January 2003
21	Hungary	1496/1984	178/1984	25 May 1983	17 February 1985	1 January 1985
22	Iceland	3684/2008	147/2008	7 July 2006	31 August 2008	1 January 2009
23	India	4580/1966	235/2006	11 February 1965	17 March 1965	1 January 1964
24	Ireland	3300/2004	262/2004	24 November 2003	29 December 2004	1 January 2005
25	Israel	2572/1998	12/1998	24 October 1995	6 March 1998	1 January 1999
26	Italy	1927/1991	17/1991	3 September 1987	20 September 1991	1 January 1984

	<b>Partner</b>	<b>Law</b>	<b>Official Gazette</b>	<b>Date of Signature</b>	<b>Entry into force</b>	<b>Effective from</b>
27	Korea	2571/1998	11/1998	20 March 1995	10 July 1998	1 January 1999
28	Kuwait	3330/2005	82/2005	2 March 2003	20 April 2005	1 January 2006
29	Latvia	3318/2005	46/2005	27 March 2002	7 March 2005	1 January 2006
30	Lithuania	3356/2005	152/2005	15 May 2002	5 December 2005	1 January 2006
31	Luxembourg	2319/1995	127/1995	22 November 1991	26 August 1995	1 January 1996
32	Malta	3681/2008	144/2008	13 October 2006	30 August 2008	1 January 2009
33	Mexico	3406/2005	265/2005	13 April 2004	7 December 2005	1 January 2006
34	Moldova	3357/2005	153/2005	29 March 2004	11 July 2005	1 January 2006
35	Morocco	3820/2010	19/2010	20 March 2007	17 November 2010	1 January 2011
36	Netherlands	1455/1984 & Protocol	89/1984 & [Protocol]	16 July 1981	17 July 1984	1 January 1981

		3464/2006	124/2006			
37	Norway	1924/1991	16/1991	27 April 1988	16 September 1991	1 January 1992
38	Poland	1939/1991	37/1991	20 November 1987	28 September 1991	1 January 1991
39	Portugal	3009/2002	90/2002	2 December 1999	13 August 2002	1 January 2003
40	Romania	2279/1995	9/1995	17 September 1991	7 April 1995	1 January 1996
41	Russian Federation	3047/2002 3679/2008	200/2002 142/2008	26 June 2000	13 December 2007	1 January 2008
42	San Marino	4243/2014	57/2014	26 June 2013	7 April 2014	1 January 2015
43	Saudi Arabia	3821/2010	20/2010	19 June 2008	1 April 2010	1 January 2011
44	Serbia	3825/2010	28/2010	11 November 2008	8 June 2010	1 January 2011
45	Slovakia	1838/1989	86/1989	23 October 1986	23 May 1989	1 January 1990
46	Slovenia	3084/2002	318/2002	5 June 2001	8 December 2003	1 January 2004

47	Spain	3015/2002	104/2002	4 December 2000	21 August 2002	1 January 2003
48	South Africa	3085/2002	319/2002	19 November 1998	19 February 2003	1 January 2004
49	Sweden	4300/1963	73/1963	6 October 1961	20 August 1963	1 January 1964
50	Swiss Federation	1502/1984	192/1984	16 June 1983	21 February 1985	1 January 1983
	<i>Partial Revision</i>	4034/2011	269/2011	23 November 2010	31 December 2011	1 January 2012
	<i>Additional Protocol</i>	4105/2013	5/2013	2 August 2012	17 January 2013	1 January 2012
51	Tunisia	3742/2009	23/2009	31 October 1992	29 September 2010	1 January 2011
52	Turkey	3228/2004	32/2004	2 December 2003	5 March 2004	1 January 2005
53	Ukraine	3046/2002	199/2002	6 November 2000	26 September 2003	1 January 2004
	<b>Partner</b>	<b>Law</b>	<b>Official Gazette</b>	<b>Date of Signature</b>	<b>Entry into force</b>	<b>Effective from</b>
54	United Arab Emirates	4234/2014	28/2014	27 June 2013	27 June 2013	1 January 2014

5 5	United States	2548/1953	231 & 333/1953	20 February 1950	30 December 1953	1 January 1953
5 6	Uzbekistan	2659/1998	268/1998	1 April 1997	15 January 1999	1 January 2000