Greece establishes Advance Pricing Agreement procedures

Executive summary

On 31 December 2013, the General Secretary of Public Revenues of Greece decreed, in accordance with the newly introduced Tax Procedures Code, the procedures for the conclusion, amendment, revocation and annulment of an Advance Pricing Arrangement (APA). The decree refers to the procedures of both unilateral and bilateral APAs. Applications for an APA, under the newly issued decree, can be made in relation to cross-border intercompany transactions that take place in financial years starting 1 January 2014 onward. Moreover, an APA is valid for financial years that have not elapsed by the time the APA request is filed.

Detailed discussion

The APA refers to the criteria to be used in determining intercompany prices for a specified time frame up to four years with respect to transactions covered by the APA. Such criteria consist of the transfer pricing method, the comparable data and relevant adjustments potentially made and the critical assumptions on the future conditions. Moreover, an APA can extend to any other particular issue in relation to the intercompany transaction pricing.

APA requests are filed with the Directorate of Tax Audits.

Preliminary consultations

Any taxpayer interested in an APA may request entering into an informal preliminary consultation with the competent tax office directorate to explore its views on a likely APA content. Such consultation is protected by tax secrecy rules and any opinions exchanged throughout such process are not binding for either of the parties. For the tax administration to express its views on the probable outcome of an APA process, the taxpayer should provide all data that can help the tax administration form a reasonable opinion on the admissibility of the proposed arrangement. Such data should, at a minimum, include the relevant business processes and transactions, the related parties concerned, the proposed transfer pricing method and duration of the APA.
Although not mandatory for filing an official APA request, when preliminary consultation has taken place, the official APA request should follow within 30 days of its conclusion.

Contents and supporting data of an APA
The official APA request should include at a minimum the following:

- Applicant's data
- Data of all related parties, including permanent establishments, associated with the intercompany transactions covered by the proposed APA
- Group structure
- Description of the relevant intercompany transactions
- Proposed transfer pricing method
- Critical assumptions on which the APA proposition is based. Critical assumptions are considered to be the functional, legal and economic circumstances critical for the price setting and thus for the APA. The critical assumptions must be based, to the extent possible on verifiable, reliable and uncontrolled data.
- Detailed description of the reasons for which the applicant considers that the suggested approach is appropriate for determining the arm's length transfer prices of the transactions concerned
- Duration of the APA requested
- Optionally, the taxpayer may also include a request for competent authority negotiation for the conclusion of a bilateral APA between Greece and the country of residence of the other party in the intercompany transaction, with which there exists a double taxation treaty, containing a Mutual Agreement Procedure clause. In such a case, a similar request should be filed with the tax administration of the other country.

The supporting documents submitted would vary depending on each case at hand. Indicatively, they may include:

- Industry and market trends that are expected to influence the value and supply chain, to the extent possible supported by surveys or economic studies.
- Description of the business strategy, including projections used in business plans and budget forecasts, information regarding business prospects and the competition, as well as information about the relevant promotion, production or R&D strategy
- Functional analysis, including risks assumed and assets used concerning the relevant intercompany transactions
- The reasons why an applicant considers an APA to be appropriate for the particular intercompany transaction
- Details on the suggested transfer pricing method and the reasons why the suggested approach is in line with the arm's length principle
- A list of all APAs already concluded by any related parties, in Greece or outside Greece, concerning the same or related transactions
- Detailed financial information of all parties in the APA for the last three years
- A list and description of all agreements concluded between related parties that affect the transactions covered by the APA

Evaluation of the APA application
The tax audit directorate authority evaluates the APA application and delivers its views on the APA's terms. To this extent the tax office can ask the applicant to provide additional information. The applicant can, as well, throughout the procedure file on his own initiative any additional information he deems relevant.

The tax audit directorate can also ask foreign tax authorities for any information it considers critical, following the procedures on information exchange provided by tax treaties. In the case where the application includes a request for competent authority procedure, the tax directorate enters into consultation in accordance with the mutual agreement procedure clause provided by the respective tax treaty. The official exchange of views is performed through exchange of position papers between the competent authorities of the contracting states. During this stage, informal contacts can take place between the applicant and the tax audit authority.

When the procedure described above is concluded, the tax directorate prepares a report presenting its suggestions and the conclusions reached. This report is provided to the applicant and, for
bilateral APAs, to the competent authority of the countries involved in the procedure. This report shall contain:

- The conclusion reached by the competent tax authority and its reasoning
- The reason for the potential rejection or amendment of the approach proposed by the applicant
- The main facts supporting the conclusions of the tax authority, which were included in the application or came to the attention of the tax administration during the evaluation process
- Information required for the verification of the critical assumptions
- Suggestions on how the implementation of the agreement will be monitored
- Brief reference to the relevant Greek legislation rules and to the applicable tax treaty

Within 10 days of drafting said report, a final hearing with the applicant shall be arranged. This deadline does not apply in the event where consultations with foreign tax offices have to take place. In such case the deadline starts from the conclusion of the procedures in all countries involved. The report along with the invitation to the final meeting is provided to the applicant 20 days prior to the meeting.

During this meeting, the parties try to reach a mutually acceptable agreement on the terms of the APA. The taxpayer can be represented by its legal representative or any other person duly appointed. If an agreement is reached, minutes on the acceptance of the APA are drafted and signed by the involved parties. If no consensus is reached or if the applicant is not present at the meeting, there are drafted minutes of rejection of the APA.

**APA decision**

Within 20 days of the hearing and according to the content of the minutes, the decision on the APA is issued by the tax authority. This decision, along with the minutes, is provided to the applicant.

The decree sets the minimum content of the decision of the tax authority.

The **APA decision** must contain:

- The data of the applicant
- The intercompany transactions covered
- Information on the related counterparties of the covered intercompany transactions
- The conclusion reached by the tax authority on the approval or not of the APA application

In the case where the APA is concluded, the relevant decision shall also contain information on:

- The duration of the APA agreement
- Details on the methodology agreed for the pricing of the intercompany transactions covered
- The critical assumptions applied and, if necessary, any acceptable deviation margin therefrom
- Documentation that must be retained during the term of the agreement in order for the tax administration to be able to monitor its implementation
- Facts or circumstances that might lead to a revision of the APA
- If necessary, the decision might also include facts or circumstances that could lead to a potential early or even retrospective termination of the APA

The whole procedure from the submission of the official APA request until the issue of the decision cannot exceed 120 days. However, in case of a bilateral APA such time constraint does not apply. The decision is valid for a maximum of four years and cannot concern financial years prior to the year the application was filed.

**Compliance report**

In cases when an APA is concluded, the applicant is obliged to file each financial year, within the income tax return filing due date, an annual report on the compliance with the APA terms and conditions for the previous financial year.

The report must contain all data supporting that the critical assumptions were duly satisfied. If it is stated that the critical assumptions have not been fulfilled, the taxpayer must submit suggestions on any relevant adjustments to be made. The tax administration is entitled to address any additional questions it might have to the taxpayer. In any case, any likely deviation must be expressly indicated in the report.

If the above mentioned report on
the compliance is not filed, the APA is considered to be annulled starting from the year for which the compliance report was not filed.

Revision, revocation or annulment of an APA
The APA can be revised at the request of the taxpayer or of the General Secretary of Public Revenue according to the conditions provided by the new Tax Procedures Code.1 The procedure to be followed is the one described above for the evaluation of the initial application.

For the revocation or the annulment of the APA, the competent tax authority must draft a special report to be provided to the taxpayer. A hearing is arranged in order for the revocation/annulment to be examined and the taxpayer is notified at least 10 days prior to the hearing. The decision must be delivered within 30 days of the hearing. The decision shall also determine the time it enters into effect. In the case where the decision on the APA is revoked, it is considered as if never issued.

Fees for the APA procedure
The decree determines the fees to be covered by the applicant throughout the process. Upon filing of the application for preliminary consultation, a duty of €1000 is paid, for filing the APA application the duty amounts to €5,000. In case consultations with foreign tax authorities take place, a duty of €10,000 is paid for the consultation procedure with each country involved.

Effective date
The procedure described above concerns cross-border intercompany transactions taking place in financial years from 1 January 2014 onward.

Implications
The decree provides useful details for the implementation of the APA regime in Greece. Overall, it is a positive development as long as in practice it will not have any discrimination effect on those taxpayers who opt not to request an APA. However, the fact that the APA report may eventually deviate from informal conclusions drawn during the preliminary stage, due to new facts that come to the attention of the tax office during the formal evaluation process, may undermine the purpose of the preliminary, informal consultation. Therefore clarification is needed about which facts, derived from which sources can alter the preliminary position of the tax office. Also more clarity would be useful on how the “non-binding character” of the preliminary consultation will be interpreted by the tax office.

Endnote
1. For more information, see EY Global Tax Alert on Recent transfer pricing regulatory developments in Greece, dated 13 September 2013.
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