

# REGULATING THE ISSUANCE OF A.P.A.'S IN GREECE

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## Tags

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Pre-submission Conference

Key Assumptions

Rollback

## INTRODUCTION

Advance Pricing Agreements (“A.P.A.’s”) regarding intercompany transfer pricing have been issued in Greece for several years.<sup>1</sup> The procedure for obtaining an A.P.A. was set forth in Circular POL.1284/2013. In late July, Decision A.1107/2023 of the Independent Authority for Public Revenue (“A.A.D.E.”) introduced new procedural and timeline-related modifications.<sup>2</sup> The Decision is effective July 28, 2023.

This article provides a comprehensive outline of the updated process for the issuance of A.P.A.’s in Greece.

## OBJECT OF THE A.P.A.

The object of the A.P.A. is to establish intercompany transfer prices that will be accepted by Greek tax authorities over a fixed time period. The A.P.A. addresses acceptable methodology, comparative data, relevant adjustments, key assumptions about future conditions, and other special matters that relate to intercompany transfer pricing. An A.P.A. application may be submitted by a Greek parent of a multinational group, a Greek company maintaining permanent establishments abroad, a Greek subsidiary of a foreign parent company, or a permanent establishment maintained in Greece by a foreign corporation.

## COMPETENT AUTHORITY

The competent authority for issuing an A.P.A. is the Directorate of Operational Planning of Audits of the General Directorate of Tax Operations of the A.A.D.E.

## PRELIMINARY CONSULTATION

Pre-submission consultation is available so that prospective applicants may assess the likelihood of obtaining a successful result. At the pre-submission conference, a taxpayer may submit documentation that may help the competent authority in reaching an informed assessment that is acceptable to the applicant. At a minimum, it must include descriptions of business risks and functions of group members, the intercompany transactions involved, the proposed methodology, the time period covered by the A.P.A., and the countries in which counterparties are resident for tax purposes.

<sup>1</sup> Article 22 of the Greek Code of Tax Procedures (L. 4987/2022).

<sup>2</sup> Government Gazette B’ 4806/28.07.2023.

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During this stage, the taxpayer and the competent authority discuss the documentation to be included in the A.P.A. application and the competent authority may highlight any points of concern and make proposals regarding the content of the application.

Upon completion of the preliminary consultation stage, the competent authority issues a formal letter in which its preliminary views regarding the outcome of the assessment and the chance of success of the A.P.A. application. This is a modification compared to the previous regime, where any such notification by the competent authority to the taxpayer was verbal and informal.

It is noted that the discussions held during this stage and the written notification of the competent authority do not have a binding effect for any of the parties involved or any impact on the process following the filing of the official A.P.A. application. Moreover, all information and data provided are covered by the tax secrecy provisions. Nonetheless, the written notice ensures that examiners have a roadmap to follow based on information gathered in the pre-submission consultation.

## FILING OF THE A.P.A. APPLICATION

The A.P.A. application is submitted to the competent authority. In case of bilateral or multilateral A.P.A.'s involving States with which Greece has concluded income tax treaties, the A.P.A. application and any accompanying or subsequent documentation must be submitted to the competent tax authority of the treaty partner jurisdiction on a simultaneous basis.

The application and relevant documentation may be submitted in English or any other accepted language, except for any documentation that the competent authority deems necessary to be submitted in the Greek language and specifically requests so.

The 30-day deadline for filing the A.P.A. application following the preliminary consultation stage no longer applies.

## CONTENT OF THE A.P.A. APPLICATION

The A.P.A. application should include all information necessary for the competent authority to assess the application and form an opinion on the methodology to be used for the determination of the intercompany transfer prices based on the arm's length principle.

The A.P.A. application must contain at least the following items:

- The data of the applicant
- The data of all the involved related parties and permanent establishments
- The group structure
- The description of the intercompany transactions for which the A.P.A. is requested, and where applicable, an additional short justification for not including all intercompany transactions in the requested A.P.A.
- The proposed methodology for the intercompany transfer prices
- The key assumptions on which the A.P.A. is based

***“The A.P.A. application must state the assumptions on which the proposed methodology is based.”***

- The time period covered by the A.P.A.
- Where applicable, a justification for requesting a unilateral A.P.A.

The A.P.A. application no longer is required to justify why the applicant deems the proposed transfer pricing methodology to be arm's length beyond the economic analysis.

In addition, the taxpayer may file supplementary information, that address the following items:

- An analysis of industry and market trends that are expected to affect the business activities, commercial exploitation studies, or economic studies of the business activities
- A brief description of the current and business strategy and potential changes to that strategy
- An analysis of functions performed and risks taken on by all entities involved in the A.P.A. application
- Detailed information on the proposed methodology and its compliance with the arm's length principle
- A list of all A.P.A.'s that have been concluded by related persons involved in the A.P.A. application that concern the same or similar transactions, either in Greece or abroad
- Detailed financial data of the last three years for all group members involved in the A.P.A. application
- A list of relevant contracts
- Any other information deemed appropriate by the taxpayer in support of the correctness of the transfer pricing

## KEY ASSUMPTIONS

The A.P.A. application must state the assumptions on which the proposed methodology is based. Key assumptions consist of (a) the functional, legal, and economic features of the taxpayer, or a specific industry or business activity and (b) the anticipated general economic conditions that are a prerequisite for the implementation of the A.P.A.

In addition, key assumptions must be based on verifiable, reliable, and independent data, to the extent possible. In addition, they must be determined according to the particular circumstances of the taxpayer, the commercial environment, and the transfer pricing methodology of the intercompany transactions. Finally, key assumptions should not be too narrowly defined. Rather, they should be based on a sufficient range of data so as to avoid making it difficult for the taxpayer to comply with the A.P.A..

## ASSESSMENT OF THE A.P.A. APPLICATION

The competent authority examines the provided information and assesses the A.P.A. application with the assistance of the Directorate of Direct Taxation, where applicable. If an applicant is requested to provide additional information or clarifications, a response must be submitted within two months from the date of the request. Previously, information simply needed to be provided within a reasonable period of time.

The competent authority is not limited in seeking information from the taxpayer, only. It may request information from foreign tax authorities using the information exchange procedure provided for by international conventions. In bilateral or multilateral A.P.A.'s, the competent authorities may conduct consultations with each other pursuant to the exchange of information provisions of the applicable income tax treaty. Exchanges of views or information can be effected through formal position papers, video conferences, and physical meetings.

The competent authority may carry out on-site inspections of the taxpayer's premises and interviews with the employees of an applicant.

## FORMAL POSITION PAPER

Upon completion of the assessment stage, the competent authority issues a Formal Position Paper stating its conclusion and proposals, which is communicated to the taxpayer. In case of a bilateral or multilateral A.P.A., the taxpayer is notified of the final Formal Position Paper which is agreed following the completion of the consultations with the foreign tax authorities.

The Formal Position Paper must address the following:

- The conclusion of the competent authority or authorities, accompanied by a brief justification for the proposed methodology and the reason for its selection
- The reasons for any rejection or modification of the initially proposed methodology
- The actual facts on which the conclusion of the competent authority is based
- Details of the key assumptions on which the A.P.A. will be based
- A plan for monitoring the implementation of the A.P.A. and reasons for its revision, revoking, or cancellation
- The time period covered by the A.P.A.

It is expected that the position paper will address the above in cursory fashion.

## FINAL MEETING

The Formal Position Paper, together with a written invitation for a final meeting, is communicated to the taxpayer at least twenty days in advance. The applicant is entitled to a copy of the minutes of the A.P.A. approval or rejection.

## ISSUANCE OF THE A.P.A.

The A.P.A. is issued within 30 days from the date of the final meeting. Previously, the A.P.A. was issued with a 20-day timeframe.

In case of a unilateral A.P.A., a decision generally must be reached with 18 months from the date on which the application was filed. However, the competent authority may be given an extension by the Governor of the A.A.D.E. The extension may not exceed 36 months.

The A.P.A. includes the following:

- The details of the taxpayer
- The details of the related counterparties
- A description of the intercompany transactions that are covered
- The duration and date of commencement of the A.P.A.'s validity
- Detailed information regarding the agreed transfer pricing methodology for the concerned intercompany transactions
- The key assumptions for the implementation, and if deemed necessary, an acceptable margin of deviation
- Possible events or circumstances that will necessitate revision or early termination.

The A.P.A. is valid for a maximum of four years.

- **ROLLBACK CLAUSE IN BILATERAL/MULTILATERAL A.P.A.'S**

In case of a bilateral or multilateral A.P.A., the taxpayer may request the inclusion of a rollback clause, namely a request for the A.P.A. to have a retroactive effect for previous tax years, provided that the facts of the A.P.A. and the facts of the rollback years are substantially comparable. In order for a rollback to be granted, the tax administration must have the right to carry out an examination for the tax years in the rollback period. This means the rollback year must not be time-barred under a statute of limitations. In addition, a rollback year must not be under examination by the tax authorities.

If a rollback is requested, an applicant must submit all the necessary information that will enable the competent authority to validate the similarity of facts in the rollback period. Once factual similarity is validated, the rollback clause is included in the A.P.A. for the years that are not barred for reasons addressed above.

## OBLIGATIONS OF THE TAXPAYER FOLLOWING THE ISSUANCE OF THE A.P.A.

Once an A.P.A. is issued, a taxpayer must submit an Annual Report of Compliance with the terms and conditions of the A.P.A. The report must be filed not later than 90 days from the deadline for filing tax returns for the tax year. Failure to timely filing the report results in the termination of the A.P.A. beginning with the year of



non-compliance. If the A.P.A. has rollback effect, the taxpayer must submit the relevant Annual Compliance Report for each previous tax year covered by the A.P.A. within 90 days from the issuance of the A.P.A. Failure to timely filing the report results in the termination of the A.P.A. for the rollback period.

Any amended tax returns that are required to be filed for previous tax years are considered as timely if filed within 30 days from the issuance of the A.P.A..

## REVISION, REVOCATION, OR CANCELLATION OF THE A.P.A.

The A.P.A. may be revised upon the request by the taxpayer or by the Governor of A.A.D.E. under the same process that applied to its issuance.

Under specific circumstances, the A.P.A. may be revoked or cancelled. In such case, a Special Position Paper is issued by the competent authority, notifying the taxpayer of the proposed cancellation or revocation. The taxpayer may protest such action in a written submission. The submission is followed by an opportunity to meet not earlier than ten days following the written protest. A final decision must be issued within 30 days from meeting.

In case of a revocation, the A.P.A. is considered as having never been issued, whereas in case of a cancellation the A.P.A. ceases to apply as of a specified time onwards.

## ADMINISTRATIVE FEES

The following administrative fees are imposed:

- €1,000 upon filing of a Preliminary Consultation request
- €5,000 upon filing of an A.P.A. request or an A.P.A. revision request
- €10,000 for each involved State upon filing of a bilateral or multilateral A.P.A. request