

# Tax

# Flash

## August 2023

### Ministerial Decision (A. 1107/2023/ 28.7.2023)

**Pursuant to Ministerial Decision A. 1107/2023 the process for concluding an Advance Pricing Agreement (hereinafter referred to as “APA”) with the Greek tax authorities has been amended.**

More specifically, Ministerial Decision A. 1107/2023 issued and in force as of 28 July 2023 (relative FEK in the Government Gazette is B’ 4806) abolished the previous Ministerial Decision governing the APA process that was issued back in 2013 (i.e. POL 1284/2013).

The most important changes introduced by the new Ministerial Decision are mainly of a procedural nature and are illustrated in the below table:

**Competent Authority for the assessment of the APA applications**

The **Directorate of “Operational Audit Planning”** is from now on the competent authority for the receipt and the examination of the APA applications instead of the former “Directorate of Special Audits” of the Ministry of Finance.

**Pre-filing meeting**

The Directorate of “Operational Audit Planning” is obliged to inform **in written** the taxpayer following the pre-filing meeting about the possibility and the chances of success when submitting a formal APA application.

*Note: There is no longer a 30 days timeframe following the pre-filing meeting, within which the formal APA application should be submitted.*

**Submission of bilateral or multilateral APAs**

In the cases of a **bilateral or multilateral APAs** to be concluded with tax jurisdictions that have in place a **Double Tax Treaty** with Greece, then the APA application and potential supplementary information requested by the competent authorities should be submitted to the tax authorities of the respective tax jurisdictions **simultaneously**.

**Language that the formal APA application and the respective data should be prepared**

The formal APA application and the respective information accompanying the application **can be submitted** either in the **English language** or **any other acceptable language**, except from that information that the competent authority requests to be submitted in the Greek language.

**Content of the APA application**

The minimum required content of an APA application provides for an **additional** short justification **for the reasons a taxpayer does not request an APA for the entirety of his intercompany transactions** (where this is the case). Also, taxpayers are **no longer obliged** (compared to the former regime) to explain the reasons why the proposed transfer pricing methodology in the APA is considered adequate on behalf of the taxpayer.

In case that the competent authority requests from the taxpayer the submission of additional explanations/ information, **the taxpayer should respond within a timeframe of 2 months following the receipt of such additional information request.**

**Evaluation of the APA application**

In the case of bilateral or multilateral APAs, the tax authorities may exchange views either with the exchange of written position papers or through conducting conference calls or physical meetings.

During the evaluation of the APA, the competent authority **may visit the premises of the taxpayer for on site inspection and interviews with the taxpayers' employees.**

**Final meeting- Position paper**

The sharing of the APA position paper along with the proposal for arranging a final meeting is communicated on behalf of the Greek tax authorities to the taxpayers at least **20 days** beforehand.

**Issuance of the APA**

The APA is issued and communicated to the taxpayers within **30 days** from the final meeting between the latter and the Greek tax authorities.

**Possibility for inclusion of a rollback clause in bilateral or multilateral APAs.**

No changes in the criteria that should be satisfied in order for a taxpayer to apply for a rollback clause in the case of bilateral or multilateral APAs.

Nonetheless, the taxpayer is **obliged** to submit the **necessary information for the years that a rollback clause is requested**, so as the **competent authority to validate that there is identification in the facts and circumstances between the years that the APA is concluded and the years that the roll back clause is requested.** The rollback clause may be included in the APA agreement once this validation on behalf of the competent authority is performed.

In case that a rollback clause is included in a bilateral or multilateral APA, the taxpayer is obliged to prepare and submit **within 90 days from the issuance of the APA, an annual compliance report** for each prior

year covered by the rollback clause accompanied by a **copy of the amending income tax return** for that year (if such filing is considered necessary).

In case an annual compliance report is not submitted for prior years covered by the rollback clause, such clause is considered as not applicable for the said years.

### **Obligations of the taxpayer following the issuance of the APA**

The **deadline for the submission of the annual APA compliance report** is extended to **90 days** following the deadline for the taxpayers' submission of the annual income tax return for the liable fiscal year.

The annual compliance report for years for which the deadline for the submission of the taxpayers annual income tax returns has lapsed are submitted within 90 days for the issuance of the APA.

Amending income tax returns for prior years that are covered following the issuance of an APA are considered as timely submitted, if the submission is completed within 30 days from the issuance of the APA.

## **Let's talk**

For a more in depth discussion of how the Joint Ministerial Decision A. 1107/2023- 28.7.2023 might affect your business, please contact:



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