

CIRCULAR
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SUBJECT:

ADVANCED PRICING AGREEMENTS

Transfer Pricing Regulations were introduced in Turkey in 2007 and have become increasingly important in the recent years. An Advance Price Agreement (“APA”) is a type of contract, which usually lasts for more than one year, between a taxpayer and the Turkish Revenue Administration (“TRA”) specifying the transfer pricing method that the taxpayer will apply to its related party transactions.

Frequently asked questions concerning APAs and our summarized answers are stated below.

1.What is an APA? What are the advantages of an APA?

In taxation law, an advanced pricing agreement is an agreement between a taxpayer and the tax authority in advance of a taxable transaction.

The aim of this agreement is to solve potential taxation disputes in a cooperative manner. Signing this agreement affirms before the state the method that the company will use to calculate transfer pricing.

Corporate Income Tax (“CIT”) payers applying for an APA may request a **unilateral, bilateral or multilateral APA**. In case TRA reaches the conclusion that, after the application of bilateral or multilateral APA, multiple countries are included; TRA will only evaluate whether there exist agreements or contracts between the countries. In this case, TRA’s evaluation will depend on said agreements between the countries.

2.Who is eligible to file for an APA?

Any taxpayer who is subject to CIT can file for an APA. But from those, only those taxpayers who have undertaken an international transaction or are contemplating undertaking an international transaction are eligible to file for an APA.

On the other hand,

- All taxpayers subject to CIT for their transactions with taxpayers in Free Trade Zones; and
- All taxpayers operating in Free Trade Areas for their transactions with taxpayers outside of the Free Trade Zones

can file for an APA.

3.What is the duration of an APA?

A formal APA signed between the taxpayer and TRA will be effective as of the signing date of the agreement. Once such an agreement is concluded, both the taxpayer and TRA are bound by the approved method applicable for the agreed-upon period (for a maximum period of three years) as long as conditions and critical assumptions of the APA are valid. For instance, the application on 17.08.2013 is successfully concluded on 05.01.2015; in this case, the APA will be effective after 05.01.2015.

4.What is the application fee for an APA?

According to the section entitled “XII – Fees of method determination agreement for transfer pricing” at the end of number (8) Tariff of Act of Fees number 492”, the application fee for an APA is 50,202.80 TL, while the renewal fee is 40,162.10 TL for 2015.

5. What is the Process for Reaching an APA?

APAs are signed at the request of the taxpayer, thus the taxpayer should apply to the Tax Administration with **written formal request** for process to start. The taxpayer should prepare and submit the necessary documents and application requests to the Tax Administration.

The Tax Administration **previews** the application to determine whether it is in line with the regulations, and whether any necessary documents are missing. If the administration determines that additional documents are necessary, the taxpayers have to submit the missing documents.

After all necessary documents are submitted, the Tax Administration **evaluates** the comparables, assets used, adjustments, methods and other requirements and conditions.

After performing all **analyses**, the Tax Administration can accept the application for an APA with or without requiring any changes, or reject the application.

If the application is accepted, an APA is **signed** between the taxpayer and the Tax Administration.

6.Can TRA audit the intercompany transactions covered by an APA?

The TRA can audit the intercompany transactions covered by an APA. TRA has the right to audit the implementation of transfer pricing policy agreed upon under an APA. On the other hand, TRA cannot challenge the transfer pricing method agreed upon within the scope of an APA.

7.What are the documentation responsibilities of taxpayers who have signed an APA?

Taxpayers having an APA do not have to prepare an “Annual Transfer Pricing Documentation Report” for their controlled transactions with related parties, if and only if that controlled transaction is within the scope of the APA. For any controlled transactions with related parties not within the scope of the APA, an “Annual Transfer Pricing Documentation Report” should be submitted to the TRA for the related year.

Taxpayers who have an APA should prepare an Annual Report every year during the term of the APA and submit it to the TRA until the deadline for filing the Annual Corporate Income Tax Return ends. An Annual Report is prepared so that the TRA can see whether the conditions for signing the APA still hold, and verify that the APA’s due date has not passed.

The Annual Report should be submitted to the TRA between the 1st and 25th days of the fourth month following the month in which the related accounting period closes as an appendix to CIT.

For instance, if an APA is signed on 25.06.2010 for 3 years, the first Annual Report would be submitted in 2011 between the 1st and 25th of April. For 2012 and 2013, the same dates will apply, as the Annual APA Report would be submitted between 1st and 25th of April for the mentioned years. For the 6-month period that is 2013, an Annual Report would be submitted to TRA in April 2014.

8.How many signed APAs are there in Turkey?

There are 4 APAs in total, all of them being unilateral. The first unilateral APA was signed in 2011 and the following two agreements were signed in 2012. The last unilateral APA was signed in 2013.

As Mazars Denge Transfer Pricing team, we do suggest an APA if you have doubts concerning selection of the transfer pricing method on controlled transactions with your related companies. You can always contact our **Transfer Pricing Department** for more detailed information concerning APAs.

Best regards,

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(*) Explanations provided in our circulars are for informative purposes only. We advise you to obtain the opinions and support of a consultant specialized in issues about which you have questions before taking action. Our consulting firm disclaims any and all losses that might be incurred as a result of transactions realized solely on basis of the explanations provided in our circulars.

(**) You may send your opinions, criticisms and queries about our circulars to our specialists, whose contact details are provided below.

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