Transfer Pricing

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GETTING THE DEAL THROUGH

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Transfer Pricing 2017

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Overview

1 Identify the principal transfer pricing legislation.

The legislation in Greece, applicable as of 1 January 2014, comprises:
- Law 4172/2013 (the Income Tax Code); and
- Law 4174/2013 (the Tax Procedures Code)

For the years up to 31 December 2013, the applicable legislation is:
- Law 2238/1994 (the Income Tax Code, replaced in 2013 by Law 4172/2013).

For transactions executed in the 2008, 2009 and 2010 financial years, Law 3728/2008 also applies.

2 Which central government agency has primary responsibility for enforcing the transfer pricing rules?

The central government agency is the Ministry of Finance. However, up to the 2015 fiscal year, certified auditors that audit legal entities are obliged to issue a tax certificate on an annual basis. This certificate verifies the compliance of the legal entity with the tax legislation. Any item evidencing non-compliance should be notified by the certified auditors to the Ministry of Finance. In this case, the certified auditors request the transfer pricing documentation file in order to examine possible transfer pricing violations. In the event that a violation is evidenced, they report this finding to the tax authorities in order for the latter to commence a thorough tax audit.

In this way, legal entities audited by certified auditors are also audited for their compliance with the transfer pricing rules on an annual basis.

It should be noted that the transfer pricing documentation file has to be provided to the certified auditors before the issuance of the tax certificate. If the legal entity does not comply with this time limit, the certified auditors have to report this to the Ministry of Finance.

As of 1 January 2016, the provision allowing tax audits to be conducted by certified auditors has become optional for corporations, limited liability companies and Greek branches of foreign legal entities. Furthermore, legal entities that will contine to be audited by certified auditors are under an obligation to assign tax audits to different certified auditors every five years.

3 What is the role of the OECD Transfer Pricing Guidelines?

The Transfer Pricing provisions of the Income Tax Code and the Tax Procedures Code are applied and interpreted in line with the principles and the guidelines of the OECD. Consequently, the tax authorities and the courts have to take into consideration the OECD Transfer Pricing Guidelines before ruling on transfer pricing cases. Although not directly binding, the OECD guidelines should be followed to determine the transfer pricing justification.

4 To what types of transactions do the transfer pricing rules apply?

The transfer pricing rules apply to transactions between 'related' parties. Two legal entities are considered 'related' parties in the following cases:
- one legal entity participates in the share capital of another legal entity, through direct or indirect holding of shares or stocks or other participation rights of at least 33 per cent, based on the value or the number;
- when they relate to another undertaking that directly or indirectly owns stock, shares, voting rights or participation in the share capital of at least 33 per cent, based on value or number, or is entitled to the profits or voting rights; and
- when there is a relation to another legal entity with which a material direct or indirect administrative dependence or control exists, or the legal entity exercises decisive influence in relation to an undertaking's decision-making.

Also, the definition of 'related' parties is satisfied if both entities have a relation of direct or indirect control or administrative dependence or there is a possibility of material influence by a third party.

On 2 July 2015, Ministerial Circular POL 1142/2.7.2015, provided clarifications on the definition of 'related' parties, in particular, that indirect participations are calculated based on the multiplication of the direct holdings in each holding level.

Moreover, the Circular provided the following examples in interpreting the notion of direct or indirect administrative dependence:
- more than half of the board of directors or one or more managing directors or directors are appointed by the other person;
- the same person or persons participating in the administration of one legal person as managing directors or directors participating in the administration of the other person under the same capacity; and
- a third person appoints more than half the board of directors or one or more of the managing directors or directors of both the other persons.

As regards the direct or indirect control with regard to the 'decisive influence', the following examples were provided by the Circular:
- one person lends or provides guarantees for credits of the other person, and the capital loaned or the guarantee provided exceeds, on an aggregate basis, 50 per cent of the borrower's total assets (credit and financial institutions are exempted from this provision);
- a third person lends or provides guarantees for the credit of two persons, and the capital loaned and guarantee provided exceed 50 per cent of the borrower's total assets on an aggregate basis (credit and financial institutions are exempted from this provision); and
- one person supplies or appoints the supplier or suppliers of the other person, with reference to at least 90 per cent of the raw and secondary materials that are required for the manufacturing of the finished products of the latter, while the former determines the sale price of these products. The above situation should derive from a written or oral agreement.

The franchisor–franchisee relationship does not imply that the parties are affiliates.

By the same Ministerial Circular it is clarified that the transfer pricing filing requirements do not apply to individuals, irrespective of the nature of the counterparty (individual, legal person, etc).

However, joint ventures fall within the scope of transfer pricing filing requirements.

Real estate investment companies are exempted from the requirement to file transfer pricing documentation.

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5 Do the relevant transfer pricing authorities adhere to the arm's-length principle?

The tax authorities, which are the competent authorities, adhere to the arm's-length principle.

6 How has the OECD's project on base erosion and profit shifting (BEPS) affected the applicable transfer pricing rules?

In the Income Tax Code (Law 4172/2013) there is direct reference to the OECD Guidelines, therefore any change in the guidelines of BEPS Actions 8-10 impact the intragroup transactions of Greek companies. The Code also provides for intragroup restructurings and the valuation of related intangibles. However, the Ministry of Finance has not issued Circulars relating to the implementation of the Code.

Pricing methods

7 What transfer pricing methods are acceptable?

All the OECD transfer pricing methods are accepted by the Income Tax Code (Law 4172/2013).

According to Ministerial Circular POL 1097/2014, as amended by POL 1144/2014, there is a preference for the traditional methods over the transactional methods. The traditional methods provide the most direct approach to estimate whether the transactions between affiliate entities comply with the arm's-length principle. Only in the event that there is no sufficient or available data for the application of the traditional methods, the legal persons may apply the transactional methods. However, in the latter case, the legal persons have to justify the application of the transactional methods instead of the traditional methods.

8 Are cost-sharing arrangements permitted? Describe the acceptable cost-sharing pricing methods.

The cost contribution arrangements (CCAs) are acceptable under the tax legislation. There are no specific guidelines regarding the acceptable cost-sharing pricing methods and there are no specific provisions for the tax treatment of payments to a contributor of existing intangibles to a CCA. In order for a CCA to satisfy the arm's-length principle, it is required that the contribution of the participants is equivalent to the contribution that the legal person would agree with an independent third party in a comparable situation. The contribution actually relates to the benefit that the legal person (the contributor) expects to have from its participation in the CCA. In order to determine whether the cost contribution meets the requirements of the arm's-length principle, the basic principle is that the cost contributed to the CCA should reflect the share of the participant in the expected benefit. The drivers that can be used to measure the distribution are sales, the materials used for the production, the products sold, the gross or operation margin, the number of employees or capital invested, etc.

The contribution payments are tax-deductible, subject to general deductibility provisions (they must be incurred for the benefit of the legal person, they must correspond to actual payments, the expense has to be posted in the accounting books of the legal person within the accounting year in which it was incurred and it must be supported by the proper documentation).

Depending on the nature of the CCA (eg, royalties or services, etc), withholding tax at the rate of 20 per cent may apply (this rate may be reduced or eliminated depending on the applicability of double tax treaties or the Interest and Royalties Directive).

9 What are the rules for selecting a transfer pricing method?

There are no specific rules for selecting a transfer pricing method. As it is stated in Ministerial Circular POL 1097/2014, the preference of the legislation is for the traditional methods. In general, the comparable uncontrolled price (CUP) method is considered the most accurate. However, depending on the nature of the transactions and the availability of comparable date, the general best-method rule may apply, to the extent that this method is justified by the taxpayer.

10 Can a taxpayer make transfer pricing adjustments?

In general, transfer pricing adjustments are allowed, and they can be posted either in the books of the legal person or directly to the tax return. Self-initiated adjustments are allowed to the extent they increase the taxable income. It is noted that debit or credit invoices for adjustments are not viewed positively by the Greek tax auditors, especially if issued at year end and result in a reduction of the taxpayer's profits or increase tax losses. In this case, such invoices are thoroughly scrutinised by the tax auditors.

11 Are special 'safe harbour' methods available for certain types of related-party transactions? What are these methods and what types of transactions do they apply to?

There are no 'safe harbour' methods available, per se. However, there are services of small value for which a follow-on charge may apply (covering only the cost of these services). Although there is no official monetary threshold for the application of 'safe harbour' methods, in practice the value of transactions for which there is no requirement for documentation is used as a threshold. In particular, Greek legal persons and branches of foreign multinational legal entities with intragroup transactions of a total value of less than €200,000 or €100,000 (depending on whether their turnover is more or less than €5 million), are not required to submit transfer pricing documentation. For these transactions, and depending on the gross revenues of the legal person, the tax auditors may accept charges on a cost recovery basis. Also, in special cases, and only for short periods of time, below-cost sales may be accepted for transfer pricing purposes, as per the OECD guidelines.

Disclosures and documentation

12 Does the tax authority require taxpayers to submit transfer pricing documentation? What are the consequences for failing to submit documentation?

There are two types of documentation requirements. The first one pertains to the filing of data with the Ministry of Finance for transactions between related parties. The second pertains to the transfer pricing documentation, justifying compliance with the arm's-length principle.

As regards the first requirement, Greek companies and branches of foreign multinational legal entities have to submit a summary information table electronically to the Ministry of Finance. This summary information table includes the intercompany transactions, general information about the group, the profile of the business and the transfer pricing method applied to each type of transaction. The summary information table has to be submitted to the Ministry of Finance not later than four months after the end of the fiscal year. However, for transactions performed after 1 January 2015, the table has to be submittted within the time period provided for the submission of annual income tax returns (currently within six months of the end of the tax year).

With regard to the second requirement, legal entities operating in Greece are required to prepare a transfer pricing documentation file for their transactions with Greek and foreign related entities. Not all transactions have to be documented. Transactions between related parties that do not exceed the value of €100,000 annually are exempted from the documentation requirement provided that the gross revenues do not exceed the amount of €5 million. In the event that the gross revenues exceed the amount of €5 million, the threshold for transfer pricing documentation increases to €200,000.

If the threshold requirement is met, every single transaction has to be documented and justified, irrespective of its value.

Legal persons exempted from the Greek Income Tax Code are also exempted from the documentation file requirements. Furthermore, foreign legal persons earning income from real estate property in Greece also have to comply with the transfer pricing requirements.

The Ministerial Circular also clarified that for loans, facilities or credits provided by affiliates, only the accrued interest should be documented. Similarly, it is only the guarantee fee that is required to be documented and not the capital itself.

Dividends and board of directors fees do not fall within the scope of transfer pricing documentation.

The transfer pricing documentation file has to be prepared every fiscal year, and within four months after the end of the fiscal year. For the fiscal years up to 2015, companies audited by certified auditors, the documentation file should be prepared before the issuance of the tax compliance report issued by the certified auditors.

The transfer pricing documentation file should be made available to the tax authorities within 30 days of the request.

The consequences of non-compliance with the transfer pricing documentation requirements are the following:

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- In the event of late filing of the summary information table there is a penalty equal to 0.1 per cent of the taxpayer's revenues. The same penalty applies in the event of non-submission of the transfer pricing documentation file to the tax authorities within 30 days. The penalty cannot be less than €1,000 or exceed €10,000.
- In the event of non-filing or inaccurate filing of the summary information table, a penalty is imposed equal to 1 per cent of the taxpayer's revenues. This penalty cannot be less than €10,000 and it cannot exceed €100,000. The same penalty applies for the non-filing or inaccurate filing of the transfer pricing documentation file.
- In the event of a second instance of non-compliance with the filing requirements within five years of the first violation, the penalty is doubled. In the case of a third instance within these five years the penalty is quadrupled.

As regards the transfer pricing adjustment:
- In the case that the additional tax is between 5 and 20 per cent of the tax amount deriving from the initial tax return, the penalty is equal to 10 per cent.
- In the case that the additional tax is greater than 20 and 50 per cent of the tax amount deriving from the initial tax return, the penalty is equal to 20 per cent.
- In the case that the additional tax is greater than 50 per cent of the tax amount deriving from the initial tax return, the penalty is equal to 100 per cent.

13 Other than complying with mandatory documentation requirements, describe any additional benefits of preparing transfer pricing documentation.

The taxpayer that prepares the transfer pricing documentation file is in a better position to justify the transfer pricing of its intercompany transactions. Moreover, the 30-day time period does not usually suffice for the full preparation of the documentation file. The taxpayer is protected against a possible fine in the case of outdated preparation of the documentation file. The most important benefit for the taxpayer is that the taxpayer is in position to better control the time required for the optimum preparation of the documentation file.

14 When must a taxpayer prepare and submit transfer pricing documentation to comply with mandatory documentation requirements or obtain additional benefits?

The transfer pricing documentation file should be prepared within four months of the end of the fiscal year. For the legal entities audited by certified auditors, the documentation file should be prepared before the issuance of the tax compliance certificate by the certified auditors. For transactions performed after 1 January 2015, the documentation file must be submitted within the time period provided for the submission of annual income tax returns (currently within six months of the end of the tax year). Possible findings by certified auditors of infringements of tax legislation may trigger an audit by the tax authorities.

In the case that the tax authorities request the transfer pricing documentation file, it should be made available within 30 days of the request.

15 What content must be included in the transfer pricing documentation? Are a separate 'master file' and 'local file' required? What are the acceptable languages for the transfer pricing documentation?

Greece has adopted the two-tier approach. Greek companies are required to file a 'master file' and a 'local file' with the tax authorities.

Master file
- A description of the taxpayer's group;
- a description of the strategy and the activities of the group, as well as any changes related to these two items;
- a description of the nature of the transactions (sale of goods, supply of services, intangible assets, financial activities);
- a description of the flow of invoices and the value of transactions;
- a description of the group's transfer pricing policy;
- a functional analysis and risk analysis for the risks undertaken by the related parties;
- any changes compared to the previous fiscal year should also be included;
- a list of the intangible assets owned by the group and the royalties related to these assets;
- details of changes to the ownership of intangible assets;
- a list of the APAs concluded with foreign tax authorities, a list of cost contribution arrangements, as well as any court rulings with regard to group entities pertaining to transfer pricing issues; and
- transactions performed within the year with legal entities prior to becoming or after discontinuing being related parties; this provision aims to examine the use of such data as comparable

Local file
- A description of the taxpayer's group;
- a description of the strategy and the activities of the group, as well as any changes related to these two items;
- a detailed description of the transactions performed between the Greek legal entity and its foreign-related legal entities, including the nature of the transactions (sale of goods, supply of services, intangible assets or financial activities, the flow of invoices, transaction values and a report of any extraordinary transactions, including business restructuring;
- in the case of transfer of intangible assets between related parties, additional information regarding compliance with the arm's-length principle is required; for the comparability analysis special factors should be taken into consideration such as expected benefits, geographical limitations, transfer of exclusivity rights and participation of the purchaser in any future exploitation of the asset;
- a comparative analysis (characteristics of the assets and services, additional information regarding comparable data, functional analysis, contractual terms, financial environment or special strategies of the company);
- a detailed analysis of the transfer pricing method used and justification for its selection;
- a detailed analysis of the transfer pricing policy used and justification for its selection;
- a commitment by the taxpayer that they will provide any additional information required by the tax authorities within a reasonable period of time, in particular in the case of a tax audit;
- a justification of any tax adjustments to the profits that aim to comply with the arm's-length principle;
- additional information with regard to transactions performed with parties established in non-cooperative jurisdictions;
- a flow chart of all transactions, including extraordinary ones; and
- copies of the contracts pertaining to the documented transactions.

In general, the documentation prepared must conform to local rules. However, the acceptance of documentation prepared on a global basis cannot be excluded, assuming that it is based on the OECD guidelines.

The Ministry of Finance held the view that expenses which are non-deductible, for tax purposes, and adjusted upon submission of the income tax return (accounting adjustments), are not subject to compliance with the arm's-length principle for the purposes of transfer pricing documentation. Such expenses must, however, be included in the transfer pricing documentation file and in the relevant list of intragroup transactions in support of the Summary Information Table, along with a reference to the fact that they have been adjusted in the annual income tax return.

As stated in Ministerial Circular 1097/2014, as amended by POL 1144/2014, the transfer pricing documentation file that relates to the foreign-related entities, and pertains to group-related information, may be written in an internationally accepted language, preferably English. However, if requested by the tax authorities a translation into Greek should be available within 30 days of the request. The transfer pricing documentation file that relates to the Greek entity and all the analysis of the intercompany transactions should be in Greek.

16 Has the tax authority proposed or adopted country-by-country reporting? What, if any, are the differences between the local rules adopting country-by-country reporting and the consensus framework of BEPS Action 13?

Greece is one of the 31 countries that signed the Multilateral Competent Authority Agreement for the Automatic Exchange of

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Country-by-Country Reports in January 2016. However, the reporting requirements in respect of providing information on revenues, profits before tax, income tax paid and accrued and other economic data have not to date been introduced.

Adjustments and settlement

17 How long does the authority have to review a transfer pricing filing?

The law does not provide for a specific time period within which the tax authorities have to review the transfer pricing documentation file. However, the statutory limitation period for auditing the fiscal year that the documentation file pertains to is five years. In practice, the Greek state prolongs the statute of limitations period at the end of each fiscal year. The limitation period currently applies to the fiscal years up to (and including) 1999.

Moreover, legal entities audited by certified auditors (see question 2) were audited up to 2015 for their compliance with the transfer pricing rules each fiscal year, within the framework of the tax certificate.

18 If the tax authority proposes a transfer pricing adjustment, what initial settlement options are available to the taxpayer?

The legislation does not provide for a settlement procedure for transfer pricing adjustments. The taxpayer may either accept the preliminary assessment proposed by the tax authority or make representations before the tax authority within 20 days of the notification of the assessment to the taxpayer. During the representations, the taxpayer may provide all the information evidencing that the tax adjustment is not valid. Within this procedure a settlement may be reached. In the event that the taxpayer either does not make any representations before the tax authority or the tax authority does not accept the taxpayer's reasoning, a final assessment is issued by the tax authority.

19 If the tax authority asserts a final transfer pricing adjustment, what options does the taxpayer have to dispute the adjustment?

Where a final assessment for the transfer pricing adjustment is served on the taxpayer, the latter may appeal before a special committee, presenting all the facts and reasons refuting the assessment. The special committee has to issue a decision within 120 days of the filing of the appeal. In order to appeal before the special committee, the taxpayer has to pay 50 per cent of the tax due in advance. For this advance payment, the taxpayer may file a petition to suspend its payment before the same committee.

In the event that the appeal is rejected or the 120 days period elapses (which is considered a 'silent' rejection of the appeal), the taxpayer may appeal before the First Instance Court within 30 days of the servicing of the decision of the special committee.

Relief from double taxation

20 Does the country have a comprehensive income tax treaty network? Do these treaties have effective mutual agreement procedures?

Greece has a comprehensive income tax treaty network with approximately 58 countries. Most of the double tax conventions for the avoidance of double taxation provide for a mutual agreement procedure.

In general the mutual agreement procedure is effective although very rarely used, since it is time and cost-consuming with uncertain results. In addition, the competent authority within the Ministry of Finance is not very insistent on reviewing such issues except in cases that relate to substantial amounts.

21 How can a taxpayer request relief from double taxation under the mutual agreement procedure of a tax treaty? Are there published procedures?

There is no specific published mutual agreement procedure. Usually, the procedure is broadly described in the respective tax treaty. In general terms, when the taxpayer considers that the actions of one or both of the countries involved result in taxation which is not in accordance with the provisions of the convention for the avoidance of double taxation, the taxpayer may notify or request from the competent tax authority of his or her residency to present his case. The competent authority will examine the request and it will either resolve it or it may ask for the mutual agreement of the competent authority of the other contracting country. The aim is to avoid double taxation. The competent authorities of both countries have to closely cooperate in order to resolve the issue by mutual agreement even if the case is not provided for in the double tax convention. The communication between the tax authorities of the contracting countries may be oral or in writing.

22 When may a taxpayer request relief from double taxation?

The taxpayer may request relief from double taxation prior to the close of the audit and more specifically before the tax assessment. However, this will not prevent the competent authority from proceeding to the assessment and activating the mutual agreement procedure after the assessment and request of the taxpayer. In practice, the taxpayer will adopt the administrative procedure by filing an appeal before the special committee in order to challenge the assessment. If the appeal is rejected, the court proceedings will follow.

23 Are there limitations on the type of relief that the competent authority will seek, both generally and in specific cases?

In general, there is no limitation on the type of relief that the competent authority will seek. A possible limitation is the case where the taxpayer has already settled with the tax auditor or a court ruling has already been issued.

24 How effective is the competent authority in obtaining relief from double taxation?

In the case of transfer pricing, the tax authorities are neither effective nor efficient. In general, they apply relief from double taxation in the case of passive income, provided that a tax residence certificate is filed with the tax authorities.

Advance pricing agreements

25 Does the country have an advance pricing agreement (APA) programme? Are unilateral, bilateral and multilateral APAs available?

As of 1 January 2014, there are specific provisions regarding APAs. APAs are regulated by the Tax Procedure Code (Law 4174/2013) and Ministerial Circular POL 1284/2013. The Ministry of Finance has issued sample templates for the application form for the APAs and for the preliminary consultation. The competent authority that examines the APA applications is the General Directorate of Tax Audits and Public Revenues.

An APA can be unilateral, bilateral or multilateral and is always based on the arm's-length principle. However, a unilateral APA cannot exclude the risk of double taxation. The tax authorities are not bound by an APA that the taxpayer has concluded with another country.

26 Describe the process for obtaining an APA, including a brief description of the submission requirements and any applicable user fees.

Before the official filing of an APA, the taxpayer may file a request for preliminary consultation in order to estimate the possibility of acceptance by the tax authorities.

To this end, a request can be filed with the Directorate of Tax Audits, which settles the data for commencement of the preliminary consultation procedure.

During this procedure, the taxpayer may file all the necessary documentation that provides solid reasoning for the acceptance of the application. This documentation has to describe the business activities, the transactions and the requested duration of an APA and the countries involved. After the filing of the documentation, negotiations are held that do not bind the parties.

Upon completion of the negotiations, the taxpayer may file the application for an APA within 30 days.

If the procedure of the preliminary consultation is not adopted, the taxpayer may file the application for an APA approval directly to the Ministry of Finance (General Directorate of Tax Audits and Public Revenues).

This application should include at least:

- the data of the applicant;

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Update and trends

Greece follows the OECD's project on base erosion and profit shifting. However, there are no official drafts or tax bill especially in the field of intangibles.

- the data of all the legal entities involved;
- the group structure;
- the description of the intercompany transactions for the invoicing of which the APA is requested;
- detailed analysis for the proposed methodology in order to evidence compliance with the arm's-length principle; and
- the time period requested for the APA implementation.

The taxpayer may also request consultation with foreign tax authorities.

The competent authority may ask for additional data from the taxpayer, or further information from the foreign tax authorities.

After the conclusion of this first negotiation phase, the competent authority issues its preliminary decision on the application. Within 10 days of this preliminary decision, the applicant is invited for further discussion. At this second phase, all the proposals by the competent authority and the applicant are discussed. If both parties reach an agreement, then minutes of the APA approval are edited. Otherwise minutes for the rejection of the APA are issued.

After the elapse of 20 days from the issuance of the minutes, the competent authority issues its official decision which is served on the applicant.

Duties have also to be paid by the applicant during the preliminary consultation procedure and the pre-approval procedures. In particular:

- for the preliminary consultation procedure, duties amounting to €1,000 are payable with the submission of the application;
- for the preapproval APA procedure, duties amounting to €5,000 are payable with the submission of the application; and
- for the request for consultation by foreign tax authorities, duty amounting to €10,000 is payable for each of the countries involved.

27 How long does it typically take to obtain a unilateral and a bilateral APA?

The maximum time period in order for the Ministry of Finance to decide on an APA application is 18 months, starting from the submission of the APA application and can be extended to 36 months. The above time period may be extended in the case that contact with the foreign tax authorities and negotiations are required.

28 How many years can an APA cover prospectively? Are rollbacks available?

The duration of an APA cannot exceed four years. Moreover, it cannot relate to a year prior to the submission of the APA application. No rollbacks are available.

29 What types of related-party transactions or issues can be covered by APAs?

Almost all transactions can be covered by the APA to the extent that they were included in the application and in the approval decision.

30 Is the APA programme widely used?

Since it is newly introduced, the APA programme is not yet widely used.

31 Is the APA programme independent from the tax authority's examination function? Is it independent from the competent authority staff that handle other double tax cases?

The APA programme is independent from the tax authority's examination function. However, during a tax audit, the tax auditors are restricted to examining whether the terms, requirements and assumptions under which the approval for the APA was provided are adhered to.

Moreover, the competent authority staff handling other double tax cases are not directly related to the APA programme. However, the two teams within the Ministry of Finance may coordinate, since APAs relate to foreign tax authorities.

32 What are the key advantages and disadvantages to obtaining an APA with the tax authority?

The key advantage of obtaining an APA is that the taxpayer has a certainty of the avoidance of double taxation or the increase of its effective tax rate. The administration cost is reduced since there is no further requirement for annual full documentation of the transfer pricing for APA transactions.

The disadvantages are that the APA procedure is time- and cost-consuming without a certain outcome, since the application may be rejected.

Special topics

33 Is the tax authority generally required to respect the form of related-party transactions as actually structured? In what circumstances can the tax authority disregard or recharacterise related-party transactions?

In principle the tax authority is required to respect the form of related-party transactions, assuming that the parties have honoured the contractual terms and have not discovered any deviation between the agreement and the actual transactions. However, if the terms of the agreement are kept, and the tax authority evidences that the arm's-length principle is not adopted, it may proceed to adjust the value of the transaction in order to comply with the arm's-length principle. In practice, this is realised when the tax authorities have to increase the taxable income of the taxpayer. In either case, the tax authorities have to scrutinise the transaction in order to examine possible transactions of a different nature than the one described in the agreement.

34 What are some of the important factors that the tax authority takes into account in selecting and evaluating comparables? In particular, does the tax authority require the use of country-specific comparable companies, or are comparables from several jurisdictions acceptable?

The tax authorities are not restricted or required to use country-specific comparables. Comparables from the same country and from comparable companies contribute significantly to support the arm's-length principle especially if the CUP method is used. Moreover, internal comparables may contribute to justify the transfer pricing. Comparables from other jurisdictions may be used, especially in export companies. In this case, other parameters (like geographical area of activity, political conditions and seasonality) should be taken into consideration. If the transactional net margin method or another method based on margins is used, comparables from different jurisdictions may be used to support the transfer pricing. Such margin-related data are usually accepted assuming that outliers (ie, extreme values) are excluded from the margin measurement. To reduce the risk of misleading data, the Ministry of Finance through its Ministerial Circular POL 1097/2014, and the recently issued POL 1142/2015, has explicitly stated that the data between the quartiles of the profit or price margin is used, discarding the lowest 25 per cent and the highest 25 per cent to leave the interquartile range. Also, for methodologies that use margins, comparable data have to be used, namely the time series data of the last three years, excluding the year that the transaction took place. As clarified by the Ministry of Finance (Ministerial Circular POL. 1227/1.10.2015) taxpayers should use the most recent database version for comparable data (ie, the one in use two months before the closing of the audited fiscal year) and any other version circulated up to the filing of the income tax return. Previous or later versions cannot be used to document transactions.

35 What is the tax authority's position and practice with respect to secret comparables? If secret comparables are ever used, what procedures are in place to allow a taxpayer to defend its own transfer pricing position against the tax authority's position based on secret comparables?

The Ministry of Finance does not use secret comparables in order to justify the transfer pricing violation. However, it can use widely used databases in order to challenge the taxpayer's data and evidence that the arm's-length principle is not applied. Unofficially, the tax authorities usually have secret comparables and they attempt to use them indirectly through the use of public information or databases.

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36 Are secondary transfer pricing adjustments required? What form do they take and what are their tax consequences? Are procedures available to obtain relief from the adverse tax consequences of certain secondary adjustments?

Secondary transfer pricing adjustments are not required. Any adjustment required in order to comply with the arm's-length principle is treated as business profit. However, if the adjustment pertains to passive income such as royalties, management fees or interest, additional withholding tax will be required.

37 Are any categories of intercompany payments non-deductible?

Ministerial Circular POL 1037/2015 provided clarifications with regard to the application of thin capitalisation rules by legal entities. In particular:

- interest from loans granted by third parties, with the exception of interest on bank, interbank and bond loans granted by public limited companies, is not deducted from the gross income of the company to the extent that it exceeds certain limits or other requirements set by the law on tax;
- subject to the above, if the interest expenses paid annually by the company are lower than the threshold of €5 million for each of the 2014 and 2015 tax years, and €3 million for the tax years after 1 January 2016, any surplus interest expenses (ie, the amount of interest expenses exceeding the amount of interest income) are fully deductible from the company's gross income, even if they exceed 60 per cent, 50 per cent, 40 per cent or 30 per cent of EBITDA for the tax years beginning on 1 January 2014, 2015, 2016 or 2017 respectively; where the interest expenses exceed the threshold of €5 million or €3 million respectively, the deductible interest expenses cannot exceed the ceiling as above of the surplus interest expenses as a percentage of EBITDA; and
- the amount of interest expenses that can be carried forward in each tax year cannot exceed the amount resulting from the percentage of EBITDA reduced by the surplus interest expenses of the same year.

38 How are location savings and other location-specific attributes treated under the applicable transfer pricing rules? How are they treated by the tax authority in practice (if different)?

Location savings are not regulated by the Greek tax legislation. Consequently there are no guidelines on the issue. However, although OECD in Action 8 of BEPS considers the local savings as a comparability factor, it does not include it in the concept of intangibles.

39 How are profits attributed to a branch or permanent establishment (PE)? Does the tax authority treat the branch or PE as a functionally separate enterprise and apply arm's-length principles? If not, what other approach is applied?

The Income Tax Code treats a branch or a permanent establishment of a foreign legal entity as a separate business unit and applies the transfer pricing rules. All the expenses incurred by the branch or the permanent establishment have to match with its revenues. In the case of allocated expenses, they can be deducted to the extent they are real and there are solid grounds for justifying for the allocation of these expenses.

40 Are any exit charges imposed on restructurings? How are they determined?

In restructurings, exit charges are imposed in the event that the tax authorities determine that the compensation for the disposal is not adequate (at arm's length). In this case, the deemed income of the taxpayer may be assessed in accordance with the arm's-length principle.

41 Are temporary special tax exemptions or rate reductions provided through government bodies such as local industrial development boards?

Under specific tax incentive laws, there are tax exemptions or partial financing available for the purchase of assets, but only at central government level (ie, at state level).

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