



Advance Pricing Agreement in 10 Question

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The lack of absolute accuracy on the implementation of transfer pricing rules and also the conflict between local tax authorities' different implementation and interpretation of the related party transactions create uncertainty for MNEs on paying taxes properly. Wrong implications due to the uncertainty on applying correct transfer pricing policies increase the risk double taxation for MNEs.

Advance Pricing Agreement ("APA") mechanism is introduced in more than 40 countries providing an excellent opportunity for taxpayers to avoid these uncertainties and risks. Bilateral APAs are becoming preferable to avoid double taxation at international levels.

APAs entered the Turkish tax system in 2008 for Turkish taxpayers, along with Corporate Tax Law No. 5520, as an alternative solution for avoiding tax disputes. Due especially to the fact the APA process was long and uncertain, the number of applications and APAs signed in the last decade is limited. To address the needs of taxpayers and to increase interest in APA applications, important arrangements and improvements were recently implemented in legislation.

In this brochure, we answer the 10 most common questions regarding APAs, within the framework of current legislation in Turkey. Our team of transfer pricing experts would be happy to provide you with support if you would like to get further information.

Kind regards

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1. What is an APA?

APA means identification of the method to be used for determination of the price or value applied in related party transactions for a specific period by means of an agreement between the taxpayer and the Turkish Revenue Administration (TRA).

The main purpose of an APA is to avoid any possible transfer pricing disputes during the term of the APA.

Taxpayers having hesitations about the method to be applied in their related party transactions may apply to the TRA

in order to request the determination of the method for a specific period of time. The method determined in this way will have certainty within the term and conditions set out in the APA.

If there is a tax inspection during the term of the APA, tax inspectors are not permitted to criticize method or pricing determined by the APA. However, inspectors are permitted to examine and criticize whether the method is applied correctly and whether APA conditions have been complied with.

2. What is the application fee for an APA?

There is no application fee for APAs.

3. Which taxpayers can apply for an APA?

Only corporate taxpayers can apply for an APA.

4. Who can be the parties to an APA?

The taxpayer applying for the APA may request a unilateral APA and also bilateral or multilateral APAs, on the condition that double tax treaty exist between the countries of the relevant taxpayers.

Unilateral APA is signed solely between the taxpayer and the TRA; bilateral APA is concluded between the taxpayer, the TRA and tax authority of another country; and multilateral APA is made between the taxpayer, the TRA and tax authorities of more than one foreign country.

5. Which transactions fall into the scope of APA?

Taxpayers may apply to the TRA for the following transactions:

- Transactions of corporate taxpayers with foreign related parties
- Transactions of corporate taxpayers with related corporate taxpayers operating in Turkish free trade zones
- Transactions of corporate taxpayers operating in Turkish free trade zones with related corporate taxpayers operating outside these zones.

6. How long is an APA term and when does it enter into force?

Taxpayers may request an APA for a five-year period, maximum. APAs become effective after they are signed or the accounting period following the signature date.

7. Can an APA be applied retrospectively?

There is an opportunity for a signed APA to be applied to periods which are not subject to statute of limitation, which is 5 years under the current legislation.

Retrospective application is only permitted in situations favorable for TRA and within the framework of regret and correction procedures.

8. How does the APA process proceed?

The APA process begins with a written application from the taxpayer. The taxpayer submits the requested information and documents to the TRA with the application letter.

If requested by the taxpayer, there may be a pre-filing meeting with the TRA before the application is submitted to discuss the scope of the APA and related transactions and whether the APA application is suitable.

Information and documents submitted are subject to assessment and analysis by the TRA. If the information and documents do not allow the TRA to make a sufficient assessment, the TRA may request additional information and documents or may meet with the taxpayer.

Following the completion of necessary data, an analysis is made regarding comparable transactions, functions performed, risks undertaken, assets used, applicable methods, APA terms and other relevant considerations.

Upon completing the analysis, the TRA may accept the taxpayer's application as is, may approve it on condition that necessary modifications are made or may reject it.

9. How long does it take to sign an APA?

After the application request with the necessary information and documents is submitted to the TRA; unilateral APA applications are to be completed within 9 months and bilateral or multilateral APA applications are to be completed within 18 months. If the applications are not completed within the mentioned time periods, these time spans can be extended if the TRA and the taxpayer agree.

Within the periods mentioned above, assessment and analysis processes will also be completed, within 6 months in unilateral APA applications and within 12 months in bilateral or unilateral APA applications.

10. What happens after the signing of the APA?

- After the signing of the APA, TRA monitors whether the taxpayer complies with the conditions of the APA through the Annual APA Report to be submitted by the taxpayer each year during the term of the APA.
- Taxpayers may apply for a request to review the APA if there is an important change in APA conditions or an important change in regulations that affects the APA during the APA period or at the end of an APA period.
- Taxpayers may also apply for a request to renew the APA by applying in writing at least 6 months before the APA expires.
- If there is no request to renew or review the APA, the APA terminates at the end of the effective period.
- APAs are terminated by the TRA unilaterally if the taxpayer does not comply with the conditions set out in the APA; if the taxpayer provides missing, incorrect or misleading information or documents; or if the taxpayer does not submit the Annual APA Report on time. In such cases, it will be considered as the APA was never made, and the taxpayer will be subject to tax inspection.

PwC Turkey

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