



**REPUBLIC OF ALBANIA
MINISTRY OF FINANCE**

**INSTRUCTION
Nr.9, date 27/02/2015
“ON ADVANCE PRICING AGREEMENTS”**

Pursuant to Article 102, point 4 of the Constitution of the Republic of Albania and pursuant to paragraph 3 of the Article 36/7 of the Law no. 8438, dated 28.12.1998 “On Income Tax”, amended the Minister of Finance

INSTRUCTS:

1. General provisions

1.1. This Instruction determines the regulations and procedures for the administration and application of Article 36/7, of the Law no. 8438, dated 28.12.1998 “On Income Tax”, amended, on advance pricing agreements.

2. Advance Pricing Agreements (APA) and their types:

2.1 The *advance pricing agreement* (“APA”) is a procedural agreement between one or more taxpayers and one or more tax administrations aiming to solve in advance possible disagreements of transfer pricing, determining before performing the controlled transactions, an appropriate set of criteria for the compliance of such transactions with market principle.

2.2 The types of agreements covered by this Instruction include:

- a) *Unilateral Advance Pricing Agreements* – whereby an agreement is entered into between a taxpayer and General Taxation Directory (GTD) concerning the application of Article 2(4), articles 36-36/7 of the Law “On Income Tax” amended to the specified controlled transactions.

- b) *Bilateral Advance Pricing Agreements* - whereby a taxpayer requests that the General Taxation Directory reach agreement with a double tax convention partner

for avoidance of double taxation (the tax authority of the other partner state) concerning the application of the associated enterprises article of the relevant double tax convention to the specified controlled transactions.

- c) *Multilateral Advance Pricing Agreements* – whereby a taxpayer requests that the General Taxation Directory reach agreement with two or more double tax convention partners concerning the application of the associated enterprises articles of the relevant double tax conventions to the specified controlled transactions.

2.3 Where a bilateral or multilateral advance pricing agreement is entered into by the General Taxation Directory and one or more double tax convention partners, this respective agreement (based on the Mutual Agreement Procedure article of the relevant tax convention) will be the basis for the advance pricing agreement in Albania and in accordance with this agreement.

2.4 The paragraph 2.2 (b) and (c) are only applicable only to cases where one or more tax conventions, or similar conventions, are applicable and said conventions contain provisions concerning associated enterprises.

3. Assurance provided by advance pricing agreements

3.1 In accordance with Article 36/7 Point 2 of the Law no. 8438, dated 28.12.1998 “On Income Tax”, amended, where a taxpayer has entered into an advance pricing agreement, no adjustment will be made under Articles 36, point 3 of the Law “On Income Tax” to the specified controlled transactions, provided the terms and conditions of the advance pricing agreement are met.

3.2 Except in exceptional circumstances the advance pricing agreements will typically not specify the actual taxable profits or income to be taxed in Albania. Rather, advance pricing agreements will specify and determine an appropriate set of criteria (e.g. transfer pricing method, comparables or comparability factors and appropriate adjustments there to, critical assumptions as to future events) consistent with the arm’s length principle for those controlled transactions over a fixed period of time.

4. Mutual expectations of taxpayers and the GTD

4.1 The mutual expectations of the taxpayer and the GTD, were relevant, are set out in Appendix 1 attached to this Instruction. The failure to comply with the mutual expectations by either the GTD or the taxpayer could result in termination or revocation of the APA process by either GTD or the side of taxpayers.

5. Eligibility

5.1 Applications for advance pricing agreements will only be considered if the controlled transactions for the entire period covered by the agreement will exceed the total value of 30 million Euros. So, if will have an agreement for a period of 3 years, the amount of transactions with associated parties should exceed 30 million euro for the three years taken together. If will have an agreement for a period of 5 years, the amount of transactions with associated parties should exceed 30 million for the five years taken together.

5.2 When controlled transactions contemplated to be covered by the agreement does not exceed the amounts specified in paragraph 5.1, the applications can be accepted by the GTD, provided that the case is sufficiently complex or is of high importance for Albania trade or business.

6. Application Fee

6.1 The application for an advance pricing agreement submitted under paragraph 11 of this Instruction has to be accompanied by a non-refundable fee of 50,000 ALL.

6.2. With the completion of the first phase of the APA procedure, in accordance with paragraph 9.1., at the initial time of phase 2, of the official application, the taxpayer should have paid the administrative fee as follows:

A) In the case of unilateral advance pricing agreement, 300,000 ALL

B) In the case of bilateral advance pricing agreement, 1,200,000 ALL; and

C) In the case of multilateral advance pricing agreement, 1,200,000 ALL.

6.3 In cases where GTD, after preliminary analysis of the documentation, after the completion of phase 2 and 3 under point 9.1 of this Instruction, refuses the application on the official route, then GTD reimburses the taxpayer 90 % of the fee paid under paragraph 6.2 above, within 30 days from the date of refusal.

6.4 The payment of the application fee is without prejudice to the right of the taxpayer to withdraw from the advance pricing agreement process, or the right of the GTD to withdraw from negotiations in accordance with Paragraph 16 of this Instruction.

6.5 Upon receipt of the taxpayer's request for the advance pricing agreement and starting negotiations under paragraph 9.1, phase 4 "Negotiation", the payment of application fee is not refunded to the taxpayer for any circumstance.

6.6. The fees set out in this provision have to be paid by taxpayers on behalf of GTD, on account of Treasury Income, of the Treasury Branch in Tirana, class 46 655 "Temporary deposits for relations with the Tax Administration" of the economic account 4665501 "Temporary deposits from application fees of advance pricing agreements ". For this the taxpayer will fill the bill for cashing with existing format which they represent to the bank at the time of payment. Treasury Branch makes accounting for the transaction identifying it for every taxpayer (in the technical sub-account opened specifically for each SIFQ (*IT Financial System of Government*)taxpayer).

GTD reconciles regularly, at the end of accounting period or before it, if it is necessary, with the Treasury Branch Tirana and amounts of fees that are not returned to taxpayers, will transfer to the appropriate account of income through internal circulation within the institution. These amounts will be used by the GTD only in terms of managing the process of negotiation and implementation of the Advance Pricing Agreements.

7. Maximum covered period

7.1 The commencement date for the APA must be the tax year that follows the date where APA application was signed.

7.2 The maximum covered period for advance pricing agreements is 5(five) years, except when the advance pricing agreement belongs the application of a reciprocal Government agreement ratified by law.

7.3 Taxpayers may not apply on an APA for a period which covers certain prior years (commonly referred to as "rollback" years). However, to the extent that the APA is signed and concluded after the first tax year of the proposed APA, the proposed tax year will still be covered under the APA agreement.

8. Scope of request and treatment of collateral Issues

8.1 The scope of application is limited to the agreements regarding the application of the arm's length principle to controlled transactions as defined in the letter d, point 4, of Article 2, of the Law No. 8438, dated 28.12.1998 "On Income Tax" amended.

8.2 Where the controlled transactions to be covered by the APA are covered by an applicable tax convention, applications should be made for bilateral or multilateral APAs. Applications for unilateral APAs in such cases will only be accepted on an exceptional basis (for example, where the tax convention partner is not willing to enter into negotiations).

8.3 Where collateral issues (such as deductibility, applicability of withholding taxes, existence of permanent establishment, attributions of profits to a permanent establishment and so forth)

are identified during the pre-filing, application or evaluation stage, these issues may be submitted to the GTD for consideration for an advance ruling in accordance with Article 36/7, of the Law No. 8438, dated 28.12.1998“On Income Tax” amended. Collateral issues will not be dealt with in the advance pricing agreement itself and the agreement will be negotiated or entered into without prejudice to such issues.

8.4 The GTD reserves the right to add additional covered transactions to the taxpayer advance pricing agreement request when the transactions are so interrelated that they must be analyzed together.

9. Advance pricing agreement process

9.1 The advance pricing agreement process in Albania comprises of 6 stages:

- Stage 1 – pre-filing meeting*
- Stage 2 – formal application*
- Stage 3 – evaluation*
- Stage 4 – negotiation*
- Stage 5 – drafting and execution*
- Stage 6 – annual report of compliance*

9.2 Each of the 6 stages is elaborated in detail in paragraphs 10-15 of this Instruction.

10. Pre-filing meeting (Stage 1)

10.1 The commencement of the APA process begins with a pre-filing meeting. The goal of the pre-filing meeting is that it allows all parties to assess the likely success of a proposed advance pricing agreement. It allows the GTD to make an informed judgment on whether the application will be acceptable as well as clarify upfront the expectations of both sides.

10.2. To enable assessment of the likely success of the proposed Albania advance pricing agreement, pre-filing meetings must be made in accordance with the pre-filing questionnaire form specified in Appendix 2.

10.3 Pre-filing meetings may be held on an anonymous basis if sufficient information is provided by the taxpayer or their representative as part of the pre-filing questionnaire in Appendix 2.

10.4 Upon receipt of the pre-filing questionnaire, the GTD will contact the taxpayer or its representative to discuss an acceptable time and place for the meeting. The meeting shall be

held within 60 days of receipt of the request for the pre-filing meeting, unless otherwise agreed by the parties.

10.5 Additional pre-filing submissions or materials for presentation at the pre-filing meeting are to be submitted to the GTD at least one week in advance. Otherwise the meeting can be rescheduled.

10.6 Any statements or representations made during the pre-filing meeting by the GTD constitute informal advice concerning the proposed application and are not binding on the GTD.

10.7 If, during the pre-filing meeting it is determined that the taxpayer's APA application would, subject to Paragraph 11 of this Instruction, be accepted by the GTD, the taxpayer will be informed in writing within 60 days of the pre-filing meeting.

10.8 If, during the pre-filing meeting it is determined that the taxpayer's APA application would not be accepted by the GTD, the taxpayer will be informed in writing within 30 days of the pre-filing meeting stating the reason that the application would not be accepted as presented in the pre-filing meeting. The following are possible reasons that the pre-filing meeting would determine that the APA application would not be accepted:

- the transactions proposed to be covered by the advance pricing agreement are not considered appropriate for an advance pricing agreement;
- the taxpayer presents risk for non compliance of duties; or
- there are complex collateral issues that require resolution prior to consideration of an advance pricing agreement (for example, existence of a permanent establishment and other material considerations).

10.9 If during the pre-filing meetings it is determined that additional information is required before a taxpayer's APA application consistent with pre-filing would be accepted by the GTD, the taxpayer will be informed in writing of the additional information required and will be provided with reasonable opportunity to present information requested within 30 days, before notice is issued under Paragraph 10.7 or Paragraph 10.8.

11. Formal application (Stage 2)

11.1 If the Albanian taxpayer intends to proceed with a formal application for an advance pricing agreement as set out in the pre-filing meeting, application for an advance pricing

agreement must be made in accordance with the information listed in Appendix 3, taking into account the eligibility criteria in paragraph 5 of this Instruction.

11.2 If the request is for a bilateral or multilateral APA, the taxpayer should submit the APA application at the same time to the competent authorities of all relevant foreign tax jurisdictions in all cases.

11.3 The GTD will acknowledge receipt of the formal APA application in writing via an *acknowledgement letter* within 60 days of the confirmed receipt of the application in the GTD office. The acknowledgement letter will state whether the application has been accepted or not.

11.4 If the application is accepted, the acknowledgment letter will state the following:

- (1) whether the APA application reflects the GTD's understanding at the pre-filing meeting;
- (2) whether the APA application is substantially complete based on the required information stated in Appendix 3;
- (3) the APA application fee is paid and accepted; and
- (4) the contact' information for the GTD person(s) assigned to evaluate the application.

11.5 If the application is rejected, the acknowledgment letter will state the reasons for rejection.

11.6 Where the application does not meet the requirements of Appendix 3, the acknowledgement letter will state the required amendments to the application to proceed with the evaluation of the APA.

11.7 An accepted APA application does not suggest or determine with certainty that the GTD and the taxpayer will conclude an advance pricing agreement, or ensure that the proposed method will be ultimately used. However, an accepted APA application does signify that the GTD will undertake the procedures as stated in Paragraph 11 and 12 of this Instruction, subject to completeness as stated in Appendix 3.

11.8 For bilateral APA applications, as soon as is administratively practicable, but no later than 60 days after receipt and acceptance of a formal APA application, the Albanian Taxation Directorate will contact the tax convention partner(s) and enquire whether it/they wish(es) to proceed with the application within the context of the tax convention.

11.9 If the taxpayer has not previously had a pre-filing meeting with the GTD according to paragraph 10 of this Instruction, the GTD, may, at its discretion, request a meeting with the taxpayer.

12. Evaluation (Stage 3)

12.1 Once the APA application is accepted and determined to be substantially complete, the GTT within 60 working days will perform a critical analysis of the APA application rather than undertaking original work to establish the arm's length outcome. Nevertheless, the GTD may undertake original work, including work at site, where the circumstances guarantee.

12.2 During the evaluation of advance pricing agreement, the GTD may undertake the following activities as part of the analysis:

- request the taxpayer to provide additional information, including information concerning the associated parties;
- request meetings with the taxpayer in order to discuss specific issues;
- undertake field research and site visits to inspect the operations of the taxpayer;
- interview personnel of the taxpayer;
- request relevant information from tax convention partners under exchange of information in accordance with the relevant provisions of an applicable tax convention; and/or
- exercise any powers under Albanian law relevant to the evaluation of the agreement.

12.3 Where the GTD performs an evaluation different from that contained in the taxpayer's application, it will discuss its evaluation with the taxpayer. The GTD will seek the taxpayer's agreement on its position or reconcile both positions to reach a mutually acceptable agreement with the taxpayer.

12.4 During the evaluation of the advance pricing agreement, the taxpayer is required to:

- make its personnel and premises available for interview and inspection respectively; and
- obtain and provide information concerning the associated parties.

12.5 If the application is bilateral or multilateral under conditions of an Albanian tax convention, the following procedures will apply:

- The taxpayer must advise the General Taxation Directorate of the information/documentation requested by the tax convention partner(s) in relation to

the application and must ensure that the General Taxation Directorate is provided with copies of any information/documentation supplied to the tax convention partner(s), whether supplied by itself or an associated party;

13. Negotiation (Stage 4)

Unilateral APA

13.1 Once the GTD concludes its analysis, they will inform the taxpayer in writing in 10 days in the form of a *position paper* which demonstrates the GTD position, and detail the extent to which the position is different from the taxpayer's proposal in the application.

13.2 If there are differences between the taxpayer and GTD regarding APA positions, taxpayer must submit in writing at GTD his reasoning regarding the method of transfer pricing or other terms of the proposed APA, prior to individual meetings.

13.3 After receiving the taxpayer response as stated in 13.2, if there are still differences between positions, the GTD will make itself available within 15 days to discuss the issues in an effort to reach agreement.

Bilateral or Multilateral APA

13.4 In the case of bilateral or multilateral APA, the GTD will exchange position papers with the foreign competent authority(s) party to the APA, and the following procedures will apply:

- The General Taxation Directorate may have individual meetings with the foreign competent authority party to the APA;
- The taxpayer does not have the right to see position papers or other materials exchanged in writing between competent authorities as part of the negotiation process. Such documents are provided under the mutual agreement procedure of the relevant tax convention, which limits its use and disclosure.
- The taxpayer does not have a right to be present at Competent Authority negotiations, except where approval for presentation at Competent Authorities meetings has been obtained from all the Competent Authorities concerned; and
- The General Taxation Directorate will keep the taxpayer updated on the status of the bilateral negotiations and communicate any timetable agreed with the other Competent Authority, as appropriate.

13.5 If an agreement is reached with the foreign competent authority, a written mutual agreement which specifies the acceptable transfer pricing method, its application and critical

assumptions assuming that agreement is exchanged. The mutual agreement can be in any written form exchanged between competent authorities of both parties.

13.6 The taxpayer can either accept or reject the mutual agreement for the APA. The taxpayer must notify the General Taxation Directorate in writing if the mutual agreement will be accepted or not, within 30 calendar days.

13.7 Where the mutual agreement is accepted, the GTD will draft an APA based on the mutual agreement and present this to the taxpayer for signature. The taxpayer is required to sign the final APA and return it to the GTD.

13.8 There may be circumstances where the General Taxation Directorate is unable to reach agreement with the tax convention partner (or partners) within 90 days, and then in those circumstances, a unilateral APA could be related to the taxpayer. In these cases, the General Taxation Directorate notifies the taxpayer in writing.

13.9 In the case of all APAs, the content of the concluded agreement (transactions covered, legal entities covered, period covered, transfer pricing method applied, results, and other relevant considerations) agreed in the APA may differ from those proposed in the taxpayer application.

14. Drafting and agreement (Stage 5)

14.1 For all APAs, once agreed the GTD will prepare an advance pricing agreement and send it to the taxpayer for signature and execution. A signed copy has to return to GTD back within 10 days.

14.2 Form and content of concluded APAs.

A concluded APA may generally be expected to contain at least the following information:

- the names and addresses of the parties to the APA;
- the controlled transactions covered by the APA;
- the period and tax years covered by the APA;
- the agreed transfer pricing methodology and its application to the covered controlled transactions;
- if applicable, the arm's length range agreed under the APA;
- a definition of relevant terms which have formed the basis of calculating the transfer pricing methodology;

- the accounting standards on which the financial statements are based;
- critical assumptions upon which the transfer pricing methodology is based;
- procedures to be followed if it is necessary to make compensating adjustments; and
- the taxpayer's consequential obligations as a result of the APA (e.g. the taxpayer's obligation to submit Annual Compliance Reports and the taxpayer's record keeping requirements).

Critical assumptions

14.3 An APA will define in advance the critical assumptions, including those not within the control of the taxpayer or the GTD. They can be any fact about the taxpayer, an affiliate, a third party, an industry or general economic conditions. The assumption is critical if its breach may significantly affect the appropriateness of the substantive terms of the APA or the basis upon which it was agreed. Critical assumptions are by their nature vital to the APA and should be drafted carefully to ensure the capability of the APA to reflect arm's length pricing, and also be limited in order to protect the certainty of the APA.

14.4 If there is a breach of a critical assumption and agreement on a revised transfer pricing methodology cannot be reached after discussion with the taxpayer and where applicable with the tax convention partner(s). The GTD will use the test of independent parties to determine whether they would be re-negotiated such an agreement in its critical assumptions change.

14.5 The taxpayer must notify the GTD that a critical assumption has been breached and submit supporting documentation with a proposed course of action (e.g. revision of the APA) within 30 days.

14.6 The GTD would assess whether unrelated parties could reasonably have been expected to foresee or anticipate the event or circumstances at the time the APA was entered into and whether the agreed transfer pricing methodology has sufficiently taken this into account. The GTD would use the arm's length test to determine whether arm's length parties would have renegotiated such an arrangement due to the change in critical assumptions.

If the APA is revised, the effective date of the revised APA will be stated in the revised APA. The revised APA should also note the date on which the original APA is no longer effective.

If a revised APA cannot be negotiated, the APA will be cancelled or suspended. The APA will be cancelled or suspended as from the beginning of the year in which the event giving rise to the

change in circumstances occurred. In general, an APA is intended to be applicable for the whole of the year or to be inapplicable for the whole of that year.

15. Annual compliance (Stage 6)

15.1 The GTD may audit a taxpayer that is party to an advance pricing agreement as part of its regular tax audit however with respect to the covered transactions in the APA the purpose of the audit will be limited to compliance with the provisions of the advance pricing agreement.

15.2 For each of the tax periods covered by the advance pricing agreement, the taxpayer is obliged to submit to the GTD a completed *APA Annual Compliance Notice*. The form and content of the *APA Annual Compliance Notice* is specified in Appendix 4 of this Instruction.

15.3 Due date for submission of the *APA Annual Compliance Notice* is the due date for the submission of the "Profit tax declaration and payment form". It may be submitted in hard copy with the balance sheet and the financial statement or in electronic ways, as required by the GTD.

15.4 If the taxpayer fails to submit the annual compliance notice, or submits an inaccurate or incomplete annual compliance notice, this will be considered to be non-compliance with one of the provisions of the advance pricing agreement for the purposes of paragraph 17 of this Instruction.

16. Right of withdrawal and refusal

16.1 In the case of unilateral advance pricing agreements, the taxpayer or the GTD may, at any time during the process, withdraw from the process if it appears clear that they will be unable to successfully conclude an advance pricing agreement. Withdrawal must be communicated in writing and the reasons for withdrawal must be clearly specified. It is expected that withdrawal will be the result of conduct inconsistent with Appendix 1.

16.2 In the case of withdrawal by the GTD, the taxpayer shall have the right to appeal the withdrawal in writing within 30 days. GTD, upon receipt of the written appeal may reconsider to retract the prior withdrawal and re-engage in negotiations.

16.3 In the case of bilateral or multilateral advance pricing agreements, the taxpayer may communicate in writing at any time its intention to refuse to accept the outcome of the negotiations, and to not enter into an APA. This will however be without prejudice to whether

or not the Albanian competent authority withdraws from negotiations with the tax convention partner(s).

16.4 In the event that a mutual agreement is reached between the Albanian competent authority and its tax convention partner(s), the taxpayer may reject the agreement by way of refusal to enter into an advance pricing agreement. In such cases however, the taxpayer forfeits the right to application for mutual agreement procedure in relation to the controlled transactions covered by the mutual agreement. In addition, the taxpayer also forfeits the right to any unilateral APA in respect of the controlled transactions in question.

17. Non-compliance with agreement

17.1 If one or more provisions of an advance pricing agreement are breached, the GTD may, subject to and in accordance with paragraphs 18-20 of this Instruction revise, cancel or revoke the advance pricing agreement.

17.2 Paragraphs 18-20 of this Instruction are applicable in all cases and may not be overridden by the provisions of a specific advance pricing agreement.

18. Revision

18.1 The GTD may, in consultation with the taxpayer, revise the provisions of a unilateral advance pricing agreement whereby:

- there is a material change in the applicable Albanian Tax Law;
- both GTD and the taxpayer have expressed, in writing, a desire to revise the provisions coming by changes in the economy or other relevant considerations.

18.2 The effective date of any revision shall be mutually agreed between the GTD and the taxpayer.

18.3 In the case of a revision of a mutual agreement, the advance pricing agreement that implements that mutual agreement will, in so far as required, be revised accordingly.

19. Cancellation

19.1 The General Taxation Directorate may cancel a unilateral advance pricing agreement whereby:

- there was a misrepresentation, mistake or omission that was not attributable to the neglect, carelessness, or willful default of the taxpayer when filing the application, during negotiations of the agreement, or when complying with reporting and compliance requirements;
- the taxpayer failed to comply with one or more of the provisions of the advance pricing agreement;
- there was a material breach of one or more of the critical assumptions; and/or
- where paragraph 18 is applicable but no agreement is able to be reached between GTD and the taxpayer within a 60 day period.

19.2 Advance Pricing Agreement will cease to be applicable from the date of cancellation.

19.3 The date of cancellation will be determined by the date of the event that led to the cancellation. If such a date may not be established, for example where there was a material change in one of the critical assumptions, the cancellation will be effective from and including the tax year in which the event occurred. The effect of the cancellation is such that the GTD and the taxpayer will no longer be bound by the agreement as of the date of cancellation.

19.4 The GTD may waive cancellation if taxpayer can show reasonable cause, and the parties agree to a revision of the agreement in accordance with paragraph 18 of this Instruction.

19.5 In the case of bilateral or multilateral advance pricing agreements, agreement shall be cancelled only in accordance with the provisions of the agreement reached between the competent authorities.

20. Revocation

20.1 The GTD may revoke a unilateral advance pricing agreement whereby:

There was a misrepresentation, mistake or omission that was attributable to the neglect, carelessness, or willful default of the taxpayer when filing the application, during negotiations of the arrangement, or when complying with reporting and compliance requirements.

20.2 The effect of revocation is such that it is deemed that the advance pricing agreement had never been concluded.

20.3 In the case of bilateral or multilateral advance pricing agreements, the agreement shall be revoked only in accordance with the provisions of the agreement reached between the competent authorities.

21. Renewal

21.1 The submission of an application to request to renew an advance pricing agreement must follow the same procedures outlined in paragraphs 9-15 of this Instruction.

21.2 Whilst in practice the terms and conditions of the previous advance pricing agreement will be influential vis-à-vis the negotiation of the renewal, the terms and conditions agreed in the previous advance pricing agreement are without prejudice to the renewal.

22. Confidentiality

22.1 In accordance with Article 25 "Confidentiality" of the Law 9920, dated 19.05.2008 "On Tax Procedures in the Republic of Albania" amended, the information presented by the taxpayer during a pre-filing meeting, in the application, during negotiations and in the final agreement is confidential and shall represent a tax secret. However, the GTD does retain the right to publically disclose statistical information on an anonymous basis as required for completing the "APA program annual report" (see paragraph 23).

22.2 With respect to bilateral or multilateral APAs, the provision of Exchanging Information of the relevant tax convention applies to the exchange of information for the purposes of the APA.

23. APA program annual report

23.1 The GTD, is obliged to prepare and publically disclose an annual report on the advance pricing agreement program.

23.2 The annual report shall specify for the applicable year:

- Number and type of advance pricing agreement applications received, distinguished by type of agreement and renewals
- Number of advance pricing agreement applications accepted and rejected, distinguished by type of agreement and renewals
- Total application fees collected and refunded
- Number of advance pricing agreements entered into and number pending (under negotiation), distinguished by type of agreement and renewals

- Average time period from acceptance of application to reaching agreement for agreements reached, distinguished by type of agreement;
- Number of advance pricing agreements revised, revoked or cancelled, distinguished by type of agreement and renewals
- Number of agreement entered into, or renewed, by industry classification of taxpayer
- Number of agreement entered into, or renewed, by type of transaction(s) covered
- Number of agreement entered into, or renewed, by transfer pricing method(s) agreed
- Number of agreement entered into during the year with each tax convention partner

24. Entry into force

This Instruction shall enter into force with the publication in the Official Gazette.

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MINISTER OF FINANCE

Appendix 1 – Summary of Mutual Expectations

A1.1 Taxpayers can expect the GTD to:

- (a) undertake open and ongoing dialogue with the taxpayer throughout the process;
- (b) work out the scope of the advance pricing agreement and the treatment approach for any collateral issues where appropriate;
- (c) enquire into the controlled transactions, transfer pricing methodology and arm's length price;
- (d) undertake examination of collateral issues, if any, and coordinate their resolution;
- (e) commit to the agreed scope of the APA, which will only be changed in exceptional circumstances;
- (f) provide timely guidance on the progress of the taxpayer's application for an APA;
- (g) work with the taxpayer to agree on the information/documentation required in the development of the APA;
- (h) jointly develop with the taxpayer an APA case plan that contains a structured timeline and work plan;
- (i) work actively with the tax convention partner(s) in the development of a bilateral/multilateral APA;
- (j) have the right to withdraw from the APA process at any time before final agreement on the APA is reached;
- (k) keep information confidential in accordance with the secrecy provisions of Article 25 "Confidentiality" and the Exchange of Information Article in the relevant tax convention (or conventions); and
- (l) apply the APA process consistently and accelerate the APA process to align with the process of the other tax convention partner(s) in a bilateral/multilateral APA.

A1.2 The GTD (and Albanian Competent Authority where relevant) can expect the taxpayer to:

- (a) co-operate fully with the GTD (and Competent Authority where relevant) throughout the process;
- (b) provide information to the GTD in a timely manner;
- (c) propose approaches that are consistent with Article 2(4), Articles 36-36/7 of the Law on 8438, date 28.12.1998 "On Income Tax" and Instruction No. 16, dated 18.06.2014 "On Transfer Pricing";
- (d) seek an APA only on controlled transactions that are current and continuing in nature;
- (e) make full and true disclosure of all relevant and material facts with respect to the controlled transactions and collateral issues, if any;

- (f) work with the GTD towards agreement on the scope of the APA and the treatment approach for collateral issues, if any;
- (g) disclose any reasonably arguable position sought to apply in connection with the controlled transactions and collateral issues, if any;
- (h) provide the same information/documentation to all tax convention partner(s) which are proposed parties to the bilateral/multilateral APA;
- (i) provide information/documentation commensurate with the complexity of the arrangement and the level of risk; and
- (j) have the right to withdraw from the APA process at any time before final agreement on the APA is reached.

Appendix 2: Pre-filing Questionnaire

To request a pre-filing meeting with the General Taxation Directorate, please complete the following form and submit it by registered post email to : Drejtoria e Përgjithshme Tatimeve, Rruga Gjin Bue Shpata.

For more information on pre-filing submissions please see Paragraph 10 of this Instruction.

General Information

1. Today's Date: ____/____/201__.
2. Albania Taxpayer Name (or Anonymous):
3. Taxpayer Registration Number (unless Anonymous):
4. Taxpayer Representative Name and Contact Information:
5. APA Term Requested (taxable years 20__ to 20__):
6. Type of APA Requested: Unilateral Bilateral Multilateral
7. Principal foreign country(ies) involved in APA covered transaction(s):
8. Initial APA Renewal APA

Proposed Covered Transactions

9. Description of Covered Transaction(s):
10. Covered Transaction Amount (denote currency):
11. Brief Industry/Business Description:
12. Proposed TPM(s):
13. Proposed Profit Level Indicator and Range (or Point):
14. Proposed Tested Party:

Pre-filing Meeting Request

15. Proposed Dates/Times for Pre-filing meeting (please include several dates/times at least 3-4 weeks from time of submitting this form):
16. Meeting Length Requested:

Appendix 3: Required APA Application Contents & Filing Information

The list of required application contents provided below is not intended to be exhaustive, but rather a list of required information for the application to be accepted by the GTD to comply with paragraph 11.1 of this Instruction on Advance Pricing Agreements. Further information may be requested as part of the evaluation process.

Accuracy Statement

1. The taxpayer must include in any APA request and supplemental submission a declaration in the following form:

Under penalties of perjury, I declare that I have examined this [APA request] [supplemental submission relating to this APA request] including accompanying documents, and, to the best of my knowledge and belief, the [APA request] [supplemental submission] contains all the relevant facts relating to the [APA request] [supplemental submission], and such facts are true, correct, and complete.

The declaration must be signed by the person or persons on whose behalf the request is being made and not by the taxpayer's representative. The person signing for a corporate taxpayer must be an authorized officer of the taxpayer who has personal knowledge of the facts.

Taxpayer Representative

2. Name and contact information for the taxpayer's representative for the APA.

Associated enterprises involved in the APA

3. A statement of the names and addresses of all enterprises or parties to the APA.
4. Details of the company group of which the enterprise is a member, including details of the ownership structure (i.e. an organizational chart).
5. Details of the principal businesses and the places where such businesses are conducted.
6. Confirmation of whether the proposal is unilateral, bilateral or multilateral APA and the reasons for the choice.
7. The tax residence of the applicant, the associated enterprises or parties to be covered by the proposed APA and the jurisdictions in or between which they conduct business.

Terms of the APA

8. Proposed years to be covered by the APA.

Covered controlled transactions

9. A description of the size, nature or characterization and value of the covered controlled transactions.

10. General information on any other controlled transactions not intended to be covered by the APA.
11. Descriptions of the key agreements between the associated enterprises.
12. Details of any significant transfer pricing arrangements or practices.

Functional analysis

13. A description of the enterprise's business.
14. Details of the economically significant functions performed by each party to the covered controlled transactions, assets used in the process and risks assumed, with a focus on the key value drivers relevant to the dealings.

Industry analysis

15. A description of the industry and the market in which the enterprise operates.
16. An explanation of the enterprise's position in the industry, including a list of major competitors.

Selection and application of the transfer pricing methodology

17. A description of the proposed transfer pricing method and the reasons why that method is the most appropriate.
18. An explanation of the transfer pricing method which is presently used to test or set the transfer prices of covered controlled transactions. If an unrecognized method is used, state the method used to set their prices.
19. A description of the most appropriate profit level indicator and the reasons for its selection, where appropriate.
20. Sufficient data to apply the transfer pricing methodology and to demonstrate that the outcome produced is at arm's length.
21. The proposed source of comparable data and the key characteristics or criteria to be met by any uncontrolled transaction in order to be regarded as potentially comparable.
22. A description of the proposed comparables and an analysis of the key comparability factors between the comparables and the tested party.
23. Details and calculation of any proposed adjustments to the comparables' results.
24. The proposed arm's length result or range which results from the application of the transfer pricing methodology.
25. Likely or forecast outcomes from the proposed methodology (including sensitivity analysis) during the term of the APA.
26. The process by which any necessary adjustments to the enterprise's actual results may be made during the course of the APA (compensating adjustments).

Others

27. The tax and financial position of all associated enterprises involved in the APA for the last 3 years, including sales, cost of goods sold, operating expenses, profit before taxes, assets, liabilities, number of employees and any other relevant data.
28. Information on forecast/budgeted financial position during the APA period.
29. A description of any events critical to the enterprise's business operations and their ability to achieve specified results under the proposed APA (i.e. critical assumptions).

Supplemental Requirement for Bilateral or Multilateral Advance Pricing Agreements

Agreement and Declaration

I agree that all documents and information submitted to the GTD for the purpose of the MAP application may be provided to the competent authority(ies) of the relevant tax convention partner(s) for processing the APA. I also undertake to send the same documents and information to the competent authority(ies) of the relevant tax convention partner(s) according to their requirements. I declare that I have examined the application, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the application are true, complete and accurate.

Name of Albanian Company: _____

Signature of Principal Officer: _____

Name and Designation of Principal Officer: _____

Application Filing Information

(1) User fees (accompanied by an identifying cover letter that includes a justification of the fee amount) must be sent to:

Drejtoria e Përgjithshme e Tatimeve, Rruga Gjin Bue Shpata-Tiranë

(2) The APA Application contents and supplementary information must be mailed or delivered to the above address.

**Please note that additional copies of the APA Application may be requested as needed.*

Appendix 4: Annual Compliance Report

In accordance with this Instruction on Advance Pricing Agreements (APAs) in Albania, the Albanian taxpayer will submit the following Annual Compliance Report as an attachment to the annual income tax return.

Section I: APA Summary Information

16. Albania Taxpayer Name:
17. Taxpayer Registration Number:
18. Taxpayer Representative Name and Contact Information:
19. APA Term (taxable years 20__ to 20__):
20. This Annual Report Summary is for Taxable Year Ending:
21. Type of APA: Unilateral Bilateral Multilateral
22. Principal foreign country(ies) involved in APA covered transaction(s):
23. Original (initial) APA Renewal APA
24. Has this APA been amended or changed? Yes No If Yes, Effective Date:
25. Has the Albanian taxpayer complied with all APA terms and conditions? Yes No
26. Has the Albanian taxpayer triggered any critical assumptions detailed in the APA?
 No Yes (If yes, attach additional statement with explanation)
27. Are any compensating adjustments required under the terms of the APA?
 No Yes (If yes, attach additional statement with explanation of compensating adjustment and where the compensating adjustment was reflected in the income tax return.)
28. Are there any material differences between the Albanian taxpayer's business operations (including functions, risks assumed, markets, contractual terms, economic conditions, property, services, and assets employed) during the current APA Year from the business operations described in the APA Request?
 No Yes (If yes, attach additional statement with explanation)
29. Are there any material changes in financial or tax accounting methods or principles employed for the APA year in respect of the covered dealings, which differ from the financial or tax accounting methods employed and reflected in the APA request?
 No Yes (If yes, attach additional statement with explanation)

Section II: Transfer Pricing Method

30. APA Tested party is: Albanian Taxpayer Foreign Both
31. APA tests on (check all that apply): Annual basis Multi-Year basis Term basis
32. APA provides (check all that apply) a: Range Point Floor only Ceiling only
 Other (please specify):
33. APA provides for adjustment (check all that apply) to: Nearest Edge Median
 Other point (please specify):

Section III: Additional APA Compliance Information

Please provide the following additional information to demonstrate compliance with the APA referenced above:

1. A brief statement demonstrating how the Albanian company is actively targeting the agreed transfer pricing as part of the APA.
2. Information and computations necessary to ascertain the outcome of the APA for the covered dealings between the Albanian taxpayer and related party. This includes demonstrating the extent of compliance with terms and conditions of the APA.
3. Additional items as may be appropriate to the particular circumstances of the Albanian taxpayer as it pertains the referenced APA.

The GTD will review the Annual Compliance Report and, if necessary, may request further information that is reasonably needed to verify that the Albanian taxpayer referenced in this APA Annual Report has complied with the terms and conditions of the APA.

If the Albanian taxpayer fails to provide the Annual Compliance Report or supply the additional information requested within as stated in Paragraph 19 of this Instruction, the GTD may cancel the APA.