

MOROCCO

ADVANCE PRICING AGREEMENTS (APA): THE MAJOR CHANGE INTRODUCED BY THE BUDGET LAW OF 2015

As part of the implementation of the recommendations of a National Conference on the tax system in 2013, and to answer operators' complaints, a new procedure was established allowing companies having links of dependence with foreign companies to contract an Advance Pricing Agreement (APA) in accordance with the arm's length principle.

To assure legal safety and stability of the fiscal environment, particularly for multinationals operating in Morocco, the 2015 Budget law introduced in part II of the fiscal procedures of the General Tax Code (CGI), a chapter dedicated to Advance Pricing Agreement procedures, the main features of which are:

Scope of the agreement

All taxable businesses that have direct or indirect dependency with businesses situated outside of Morocco can conclude a prior agreement with the Moroccan tax administration on the agreed transfer price method for a period of four years.

Duration of the agreement

According to article 234bis of CGI, the duration of an APA should not exceed four years.

Conditions of the agreement

The conditions of conclusion of the APA will be subject to a statutory text which will specify in particular:

- The filing, the structure and the contents of the application as well as the documents forming part of it;
- The examination of the application and the progress of the negotiations;
- The duration of the agreement and its aims;
- The Administrative entity responsible for the management and monitoring of these agreements.

Guarantees of the agreement

The APA allows the company to benefit from the following guarantees:

- The guarantee that the prices practiced in its industrial, commercial or financial intra-group relations would not be subject of adjustment in the indirectly transferred profits;
- The guarantee that the agreement will be applied to all its future transactions realised during the period of the agreement.

Consequently, the Tax Administration cannot challenge the adopted transfer price method which has been the subject of an APA with a company, according to article 234bis of CGI, except in the following cases:

- Untrue statement of the facts, the dissimulation of information, errors or omissions attributable to the company;
- Non-compliance with the agreed method and with the requirements contained in the agreement by the company, or the use of fraudulent practices.

Thus, when the accuracy of the facts presented initially by the taxpayer, during the conclusion of the agreement, is not verified, or when the taxpayer does not respect the contractual obligations, the agreement is considered as invalid and ineffective from the outset.

However, the above-mentioned cases can be raised by the administration only within the rectification procedures stipulated in articles 220 or 221 of the CGI. The tax position is then established in accordance with ordinary law.

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