

Law no. 207/2015 on the Fiscal Procedural Code, as later amended and expanded

ART. 52 Advance tax ruling and advance pricing agreement

(1) The advance tax ruling shall be the administrative act issued by the National Agency for Fiscal Administration with the purpose of solving an application of the taxpayer/payer referring to the regulation of certain future fiscal states of fact. The future fiscal state of fact shall be assessed depending on the date of submission of application.

(2) The advance pricing agreement shall be the administrative act issued by the central tax body in order to settle an application of the taxpayer/payer, relating to establishing the conditions and modalities in which transfer prices are to be determined, throughout a fixed period of time, in case of transactions carried out by related parties, as they are defined in the Fiscal Code. The future transactions that are subject to the advance pricing agreement shall be assessed depending on the date of submission of the application. The taxpayer/payer may request an advance pricing agreement also for determining the fiscal result attributable to a permanent establishment.

(3) Before submitting the application for issuing of the advance tax ruling or for issuing/amending an advance pricing agreement, the taxpayer/payer may request in writing to the competent tax body a preliminary discussion in order to establish the existence of the future state of facts for issuing a tax solution, respectively for concluding an agreement or, as the case may be, the conditions for amending the agreement.

(4) The application for issuance of the advance tax ruling or of the advance pricing agreement should be accompanied by documents relevant for the issuance, as well as by the proof of payment of the issuance fee.

(5) By means of the application the taxpayer/payer proposes the content of the advance tax ruling or of the tax advance pricing agreement, as applicable.

(6) For the purpose of solving the application, the competent tax body may request from the taxpayer/payer clarifications on the application and/or the documents submitted.

(7) Before issuing the advance tax ruling or the advance pricing agreement, as the case may be, the competent tax authority shall submit taxpayer/payer the draft administrative act in question, giving him the opportunity to express its view according to Article 9 (1), unless the taxpayer/payer waives this right and notifies the tax authority.

(8) The taxpayer/payer may submit the clarifications provided in paragraph (6) or may express the views provided in paragraph (7) within 60 working days from the date of application for the necessary clarifications or from the date of communication of the draft advance tax ruling or of the advance pricing agreement.

(9) For the settlement of the application of the taxpayer/payer the advance tax ruling or the advance pricing agreement shall be issued. In case that the taxpayer/payer disagrees with the advance tax ruling or with the advance pricing agreement issued, he shall submit, within 30 days since the communication, a notification to the issuing tax authority. The advance tax ruling or the advance pricing agreement for which the taxpayer/payer has sent a notification shall produce no legal effects.

(10) The advance tax ruling or the advance pricing agreement shall be communicated to the taxpayer/payer to whom/which they are intended, as well as to the competent tax authority to administer the fiscal claim owed by the applicant taxpayer/payer.

(11) The advance tax ruling and the advance pricing agreement shall be opposable to the tax authority and they shall be mandatory for such authority only if their terms and conditions

have been met by the taxpayer/payer.

(12) The time limit for solving the application for the issuing of an advance pricing agreement is 12 months in case of a unilateral agreement, respectively 18 months for a bilateral or multilateral agreement, as the case may be. The time limit for solving the application for the issuing of the advance tax ruling is up to 3 months. The provisions of Article 77 shall be applicable accordingly.

(13) The taxpayer/payer, holder of an advance pricing agreement, shall have the obligation to submit annually, to the issuing tax authority, a report on the manner of carrying out the terms and conditions of the agreement in the reporting year. The report shall be submitted by the time limit provided by the law for submitting the annual financial statements, of the annual accounting reports respectively.

(14) During the validity period, the advance pricing agreement may be modified by extending the validity, expansion or, where appropriate, review at the request of the holder of the agreement, by submitting a request in this regard. Extending the validity of the advance pricing agreement may be carried out when the taxpayer/payer requests it, if the same terms and conditions apply. The expansion may be carried out when the taxpayer/payer requests for the inclusion of other transactions with related parties in the advance pricing agreement concluded. The review may take place when factual circumstances and elements not forecast or inaccurately forecast at the time of issue of advance pricing agreement arise and they may influence the terms and the conditions of the agreement. The application for modification may be submitted at least 30 days before the validity period expires, under the sanction of cancellation. In case the application for modification is approved after the validity period of the advance pricing agreement expires, it shall produce effects for the past as well, respectively for the period between the validity period and date of communication of the decision for approval of the modification.

(15) The advance pricing agreement may be issued unilaterally, bilaterally or multilaterally. The unilateral advance pricing agreement shall be issued by the competent tax authority in Romania. The bilateral or multilateral agreement shall be issued jointly by the competent tax authority from Romania and the competent tax authorities of the Member States in whose jurisdiction the related parties of the applicant taxpayer/payer are located. The bilateral/multilateral advance pricing agreement may only be issued for transactions with taxpayers/payers from countries with which Romania has concluded conventions for avoidance of double taxation. In this case, the provisions related to the "Mutual agreement procedure" provided in the double taxation conventions shall be applicable.

(16) Issuing an advance tax ruling shall be subject to an issuance fee as follows:

- a) EUR 5 000, at the exchange rate of the National Bank of Romania for the day in which the payment is made, for large taxpayers;
- b) EUR 3 000 at the exchange rate of the National Bank of Romania for the day in which the payment is made, for the other categories of taxpayers/payers.

(17) Issuing an advance pricing agreement shall be subject to an issuance fee/an amendment, as follows:

- a) EUR 20 000, at the exchange rate of the National Bank of Romania for the day in which the payment is made, for large taxpayers. In case of the amendment of the agreement the fee shall be EUR 15 000, at the exchange rate of the National Bank of Romania on the day of making the payment;
- b) EUR 10 000 at the rate of the National Bank of Romania for the day in which the payment is made, for the other categories of taxpayers/payers. In case the consolidated value of the

transactions included in the agreement exceeds the equivalent value of the EUR 4 000 000, at the exchange rate of the National Bank of Romania on 31 December of the fiscal year for which the report on the manner of carrying out the terms and conditions of the agreement is submitted, or the taxpayer/payer is classified in the category "large taxpayers" for the validity period of the agreement, the issue fee shall be the one provided in letter a). In case of the modification of the agreement, the fee shall be EUR 6 000, at the exchange rate of the National Bank of Romania for the day in which the payment is made. In case the consolidated value of transactions included in the agreement exceeds the equivalent value of EUR 4 000 000, at the exchange rate of the National Bank of Romania on 31 December of the fiscal year for which the report on the manner of carrying out the terms and conditions of the agreement is submitted, or the taxpayer/payer shall be classified in the category of "large taxpayers" for the validity period of the agreement, the fee for amendment shall be the one provided in paragraph a).

(18) Any possible tax differences owed according to paragraph (17) shall be paid after the date of submission of the report on the manner of carrying out the terms and conditions of the agreement in which it is established that the limit is exceeded or classification into the category "large taxpayers".

(19) The applicant taxpayer/payer shall be entitled to a refund of the tax paid in case the competent tax authority rejects the issuing of the advance tax ruling, respectively the issuance/modification of the advance pricing agreement.

(20) The advance tax ruling and the advance pricing agreement shall no longer be valid if the legal provisions of fiscal material law on the basis which the decision made are changed.

(21) The advance tax ruling and the advance pricing agreement, as well as the rejection of the application for the issuing of the advance tax ruling and the advance pricing agreement shall be approved by order of the president of the N.A.F.A.

(22) An order of the president of the N.A.F.A.*) shall establish the procedure for issuing the advance tax ruling or the advance pricing agreement, as well as the contents of the application for issuing of the advance tax ruling or of the advance pricing agreement and for the application for amendment, expansion or review of the advance pricing agreement.

ART. 282 Mutual agreement procedure

(1) Under the provisions of the convention or agreement for the avoidance of double taxation, the taxpayer/payer that is a resident in Romania and that considers that the taxation in the other contracting state is not in compliance with that convention or agreement, may request the National Agency for Fiscal Administration to initiate the mutual agreement procedure.

(2) The National Agency for Fiscal Administration shall conduct the mutual agreement procedure also in case the competent authority of the state with which Romania has concluded a convention or an agreement for the avoidance of double taxation so requests.

(3) The provisions of paragraphs (1) and (2) shall be supplemented by the provisions of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC), of the revised Code of Conduct for the effective implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (2009/C322/01), as well as of the conventions or agreements for avoidance of double taxation concluded by Romania with other states.

(4) The procedure of conducting the mutual agreement procedure shall be approved by order of the president of the National Agency for Fiscal Administration.