

TAX BRIEFING: Monthly Insight

Recent Developments in Tax Legislation

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A. Decision E.2062/2021 Provides Clarification on the Extension of Deadlines for the Filing of Quasi-Judicial Recourse and Requests for Suspension Pursuant to Article 63 of Law 4174/2013

1. By virtue of Decision E.2062/2021 the Directorate of Dispute Resolution (DDR) clarifies that:
 - a. the time limit for filing a quasi-judicial recourse; and
 - b. a request for suspension pursuant to Article 63 of Law 4174/2013 that expired on or expires after 1 February 2021, is extended until 29 April 2021.
2. The time limit for the issuance of a decision by the DDR on quasi-judicial recourses is further extended to 29 October 2021.¹

B. Decision No. 2054/2021 Provides Guidelines Regarding the Impact of Covid-19 on Transfer Pricing

1. Following the general guidelines issued by the OECD on 18 December 2020, the Independent Authority of Public Revenues (IAPR) by virtue of Decision E.2054/2021 (Decision) provides further clarification on transfer pricing due to the considerable impact of the pandemic on business activities. In particular, the Decision examines the following issues:

- a. Comparability analysis to be performed by taxpayers: in order to document transfer pricing in 2020, information on the economic impact of Covid-19 on the transactions in question may *inter alia* be drawn from:
 - i. an analysis of changes in sales volumes due to the pandemic;
 - ii. an analysis of changes in productive activity of the group in question in relation to:
 - the normal level of productive activity associated with the controlled transaction; and
 - transactions with independent companies;
 - iii. an analysis/quantification of the financial effects of State aid programs and their accounting treatment in the books of the respective legal entity.
 - b. Taxpayers must exercise due diligence in assessing the possible effects of the pandemic on transfer pricing. More than one of the OECD methods for the documentation of transfer pricing can be used, without however the use of multiple methods being mandatory.
2. Losses and expenses incurred due to the special conditions under Covid-19:
 - a. In response to the pandemic, independent parties may seek to renegotiate certain terms in existing agreements especially if it is in their interest to do so. Related parties can also consider revising their agreements but always in compliance with the arm's length principle. To properly document intragroup transactions, affiliates must analyze the behavior of independent companies on similar transactions and under comparable conditions, with the aim of identifying cases where the contractual terms have not been kept to or have been amended. The Decision introduces the presumption that, in the absence of clear evidence that independent parties under comparable circumstances would have revised their agreements or trade relations, such intragroup transactions are not in compliance with the arm's length principle.
 - b. There are cases where businesses may invoke reasons of force majeure to suspend, postpone or be exempt from their contractual obligations, without any liability. However, the pandemic is not per se a cause of force

1. The time limit has been previously extended to 31 March 2021, 30 June 2021 and 4 May 2021.

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majeure even if the parties have included a relevant clause in their agreements and sufficient evidence must be provided to evidence the extraordinary circumstances that substantiate the concept of force majeure.

3. **Extraordinary costs:** The allocation of extraordinary costs between related parties incurred due to Covid-19 must be based on a detailed description of the controlled transaction and the allocation of functions and risks. The allocation indicates the party that bears the risks of the performed functions resulting in the proportional allocation of extraordinary costs.
4. **Government Assistance Programmes (GAP)** that provide direct or indirect economic benefit to eligible taxpayers such as grants, subsidies, forgivable loans, tax deductions or investment allowances. The terms and conditions of Covid-19 GAPs should be considered when determining the potential impact of such programmes on controlled transactions and comparing their effects with those of other pre-existing assistance programmes. The extraordinary and temporary nature of GAPs distinguishes them from other programs of a more permanent nature that companies receive. To determine the effect of a GAP

on transfer pricing of related parties with respect to a specific transaction, a detailed examination of the conditions in the market is required. This should include the level of competition as well as the economically significant risks borne by a related party.

5. **Advance Pricing Agreements (APAs):** APAs in force during 2020 continue to be valid and binding on contracting parties. Their terms should be respected unless a condition leading to the cancellation or revision of the APA has occurred. The main issue in question is whether the effects of the pandemic imply a breach of critical assumptions. Simple changes in financial results do not per se constitute a breach of critical assumptions. A review may be made in cases where the breach of critical assumptions causes significant changes in the conditions under which the APA has been agreed. In this event, the agreement between taxpayers and the tax authorities is required for the years that are affected by Covid-19 and are covered by the APA. Cancellation of an APA may occur when there is a material breach in an APA's critical assumption as a result of a change in economic circumstances or when the taxpayer fails to materially comply with any term or condition of the APA.

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