



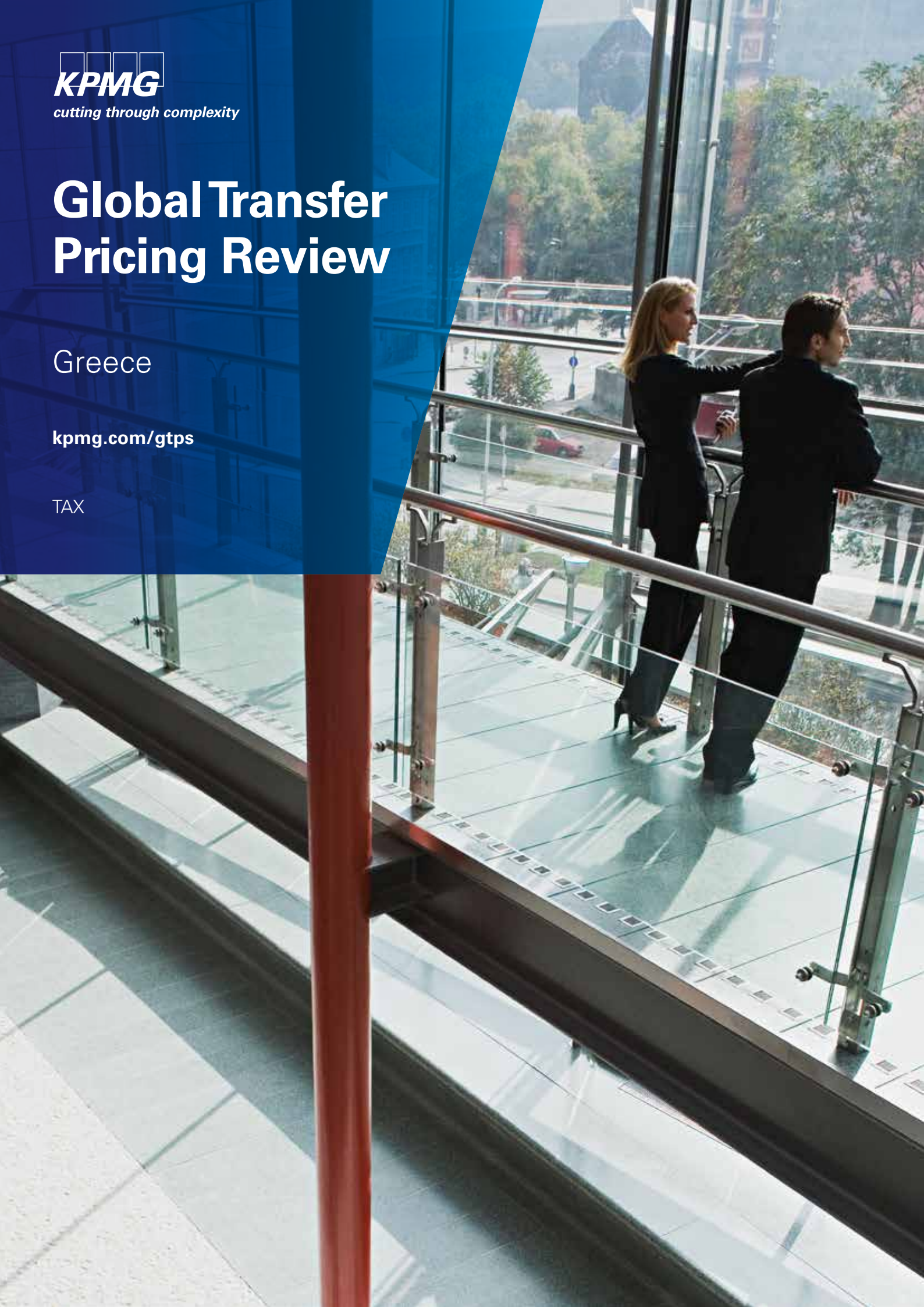
cutting through complexity

Global Transfer Pricing Review

Greece

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TAX



Greece



KPMG observation

Enterprises must comply with different acts of legislation in relation to their transfer pricing obligations depending on the financial year under review. For tax years commencing 1 January 2014, the new transfer pricing provisions apply on the basis of the New Income Tax Code (Law 4172/2013) and the New Code of Tax Procedures (Law 4174/2013). The new transfer pricing provisions extend the scope of transactions that must be documented and the definition of associated enterprises.

Law 4174/2013 requires entities having the legal form of a corporation to obtain an Annual Tax Certificate. In the process of issuing these Annual Tax Certificates, certified auditors review a taxpayer's transfer pricing documentation. Those taxpayers that do not comply will be issued an Annual Tax Certificate "with a reservation," regarding the auditors' inability to express an opinion on the arm's length nature of a taxpayer's transactions, and which in turn could result in the Greek tax authorities initiating a tax audit.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Required to be contemporaneous	Submission to tax authority required	Thresholds apply/exit
Legal requirements	●	●	●	●
Protection from penalties	●	●	●	●
Reduce risk of adjustment	●	●	●	●
Shifts burden of proof	●	●	●	●

Basic information

Tax authority name

Transfer pricing audits are carried out by the tax authorities. For large enterprises the competent authority is the Tax Office of Large Incorporations. Furthermore, entities having the legal form of Anonymos Eteria (AE), Eteria Periorismenis Efthynis (EPE) and branches of foreign entities, which satisfy specific criteria will have their transfer pricing documentation audited by certified auditors for the issuance of the Annual Tax Certificate.

Citation for transfer pricing rules

- for tax years 2008-2012 article 26 of Law 3728/2008 of the Ministry of Development
- for tax years 2010-2013 Articles 39, 39A, 39B and 39C of Income Tax Law 2238/1994 as in force in each respective year
- for tax years commencing 1 January 2014 onwards, Articles 50 and 51 of Law 4172/2013 and Articles 21, 22 and 56 of Law 4174/2013.

Effective date of transfer pricing rules

For tax years commencing 1 January 2014, the transfer pricing documentation file must be prepared and the relevant summary information sheet concerning intra-group transactions must be electronically submitted to the Ministry of Finance within four months from the end of the company's year-end.

What is the relationship threshold for transfer pricing rules to apply between parties?

According to Law 4172/2013, the threshold relationship for transfer pricing rules to apply for associated persons is direct or indirect substantial control in the management or capital. The participation threshold in the capital is set at a percentage of 33 and above. It also includes cases where there is decisive influence or where there is a capability to exercise decisive influence. Specific cases are also described in the relevant legislation.

Greek companies must maintain a transfer pricing documentation file for their intra-group transactions with one or more associated enterprises which exceed the amount of either:

- 100,000 euros (EUR) in total, if the gross revenues of the company in question for the respective tax year does not exceed the amount of EUR5 million; or
- EUR200,000 in total if the gross revenue of the company in question for the respective tax year exceeds the amount of EUR5 million.

Law 4174/2013 as currently in force does not stipulate a minimum amount for the transactions that must be documented if the above thresholds are met, therefore if above thresholds are met all intercompany transactions must be documented.

What is the statute of limitations on assessment of transfer pricing adjustments?

Five years from tax year-end. The five year period commences at the end of the year in which the annual corporate income tax return was filed with respect to the previous accounting year. Under certain conditions, the statute can be extended to 20 years.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. A transfer pricing study (transfer pricing documentation file) must be prepared and provided by the companies

to their certified auditors before the issuance of the Annual Tax Certificate (not all companies have an obligation to obtain a tax certificate) and in any case within four months from the end of their financial year. The transfer pricing documentation file is accompanied by a summary information sheet. This summary information sheet must be electronically submitted to the General Secretariat of Information Systems of the Ministry of Finance within four months of the end of the company's financial year. Even in the cases where a Tax Certificate has been issued a sample of at least nine percent of the companies under audit by certified auditors will be selected to be further audited by the tax authorities based on criteria set by the Ministry of Finance. If no Tax Certificate obligation exists the documentation file must be submitted to the competent tax authority in case of a tax audit within 30 days of request.

What types of transfer pricing information must be disclosed?

The summary information sheet must contain information regarding the functional identity of the company, i.e. the group it belongs to, the functions it performs and the risks it assumes, as well as a list of the intra-group transactions that require documentation which have taken place within the respective financial year. It must also include the transfer pricing method followed to test each intercompany transaction, whether APAs exist and also whether a transfer pricing study is in place.

The transfer pricing documentation file consists of the "basic documentation file" and the "Greek documentation file". The exact information that must be included in the transfer pricing documentation file as well as the summary information sheet is determined in Circular (i.e. POL 1097/2014 as amended by POL 1144/2014) which has been issued by the Ministry of Finance).

In general the basic documentation file is common for all group entities and contains typical information for all the associated companies and the branches of the group. The Greek documentation file, which accompanies the basic documentation file, contains additional

information regarding the Greek entities of the group, the permanent establishments of the foreign entity in Greece or the permanent establishments of the Greek entity abroad.

What are the consequences of failure to submit disclosures?

Where the summary information sheet and/or the transfer pricing documentation file are not submitted to the competent audit authority, a one-off penalty at the rate of one percent of the company's recorded gross revenues (including any adjustments of profits) is imposed. The penalty imposed should not be less than EUR10,000 and should not exceed EUR100,000. Moreover, the one-off penalty at the rate of one percent of the company's recorded gross revenues is imposed in the case of submission of an inaccurate/incomplete summary information sheet.

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

Yes. The basic file may be maintained in English with the obligation to be translated in Greek if requested by the tax authority within 30 days from the relevant request. The Greek Documentation File must be maintained in Greek.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

No. According to the transfer pricing provisions, the tax authority's audit will take into consideration the OECD Guidelines. It is further specifically stipulated that a transfer pricing documentation file consists of the "basic documentation file" and the "Greek documentation file". The exact information which must be included is stipulated in the respective Ministerial Circular (POL 1097/2014 as amended by POL 1144/2014).

Generally the information covered is the information of Chapter V of the OECD Guidelines but also includes some additional information i.e. specific

information for business restructurings, APAs, court decisions and cost contribution agreements, copies of contracts, specific information on the contractual arrangements and additional information for transactions with entities in countries with which Greece has no administrative cooperation for tax purposes (there is a list of such countries).

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes. The transfer pricing methods to be used are determined by virtue of Ministerial Circular POL 1097/2014 as amended by POL 1144/2014 issued by the Ministry of Finance on 18 July 2013. These are the transfer pricing methods outlined in Chapter II of the OECD Guidelines.

Ministerial Circular POL 1097/2014 as amended by POL 1144/2014 stipulates that there is a priority of the traditional transfer pricing methods (e.g. Comparable Uncontrolled Price (CUP) method, resale price method and cost plus method) over the transactional transfer pricing methods (transactional net margin method and profit split method). In cases where there is insufficient or no data for the use of the traditional transfer pricing methods, taxpayers may use the transactional transfer pricing methods provided that justification for their selection is included in the transfer pricing documentation file.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 30 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

The documentation file must be submitted to the competent tax authority in case of a tax audit within 30 days of request. However, please note that apart from the obligation towards the competent tax authority, the transfer pricing file is required to be completed within four months from the closing date of the company's financial year. Failure to submit the documentation file is subject to a one-off penalty at the rate of one percent of the company's recorded gross revenues including any adjustment of profits. The penalty imposed should not be less than EUR10,000 and should not exceed the amount of EUR100,000.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

Upon the issuance of a tax assessment note the taxpayer may file a request for re-examination at the Department of Internal Re-Examinations of the General Secretariat of Public Revenues. The taxpayer has a right of appeal against the administrative decision before the administrative courts. There is also the option to use the Mutual Agreement Procedure and the Arbitration Convention.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Law 4172/2013 does not include any special provisions in this respect. Therefore the general tax provisions will apply whereby an adjustment in profits will be subject to the relevant penalties applying to an inaccurate tax return. In case of an inaccurate tax return the penalty will amount to 10 percent of the additional tax not reported, if the tax amount is equal to or higher than five percent but less than 20 percent of the correct tax due, 30 percent of additional tax not reported, if the tax is higher than 20 percent of the correct tax due, 100 percent of the additional tax not reported, if the tax is higher than 50 percent of the correct tax due and provided that the inaccurate reporting of information was intentional. Also

interest is calculated in the amount of tax due from the expiration of the initial filing deadline up to the date the actual payment of tax takes place.

To what extent are transfer pricing penalties enforced?

Ministry of Finance transfer pricing audits which are now being finalized have commenced to impose penalties.

What defenses are available with respect to penalties?

It is imperative to have the stipulated transfer pricing file in place in order to avoid penalties. If documentation evidences that transactions are not arm's length, then specific justification must be provided e.g. extraordinary events. No court precedents exist yet accepting such justifications.

What trends are being observed currently?

The Ministry of Finance audits mainly focus on intra-group transactions within multinational groups, on transactions involving intangibles and related royalty issues, on loss making companies and companies having a substantial volume of international transactions.

In addition to the above, Law 4172/2013 introduced the application of the arm's length principle to business restructurings either local or cross-border. More specifically business restructurings consisting of a transfer of operations, assets, risks and/or business opportunities between related parties as well as any transfer or granting of a right to use goodwill or intangible assets effected in the context of such business restructurings must be performed at a price that is in compliance with the arm's length principle.

Special considerations

Are secret comparables used by tax authorities?

Although there is no precedence in this respect in practice tax authorities may use secret comparables. This remains to be determined.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No. In practice pan European benchmarking studies are used.

Do tax authorities have requirements or preferences regarding databases for comparables?

No.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, always.

Does the tax authority have other preferences in benchmarking? If so, please describe.

The benchmarking studies used must cover the most recent three year period and the initial benchmarking study may be updated for the next two years. Shareholder's ownership threshold must be less than 33 percent. This step must apply for both corporate and individuals shareholders. In addition, subsidiary ownership threshold must be less than 33 percent.

What level of interaction do tax authorities have with customs authorities?

High.

Are there limitations on deductibility of management fees beyond the arm's length principle?

Yes. Beyond the arm's length principle the general tax requirements will also need to be satisfied, i.e. (i) fees/ expenses should be paid for the benefit of the company or should relate to the company's usual transactions, (ii) expenses should correspond to a genuine transaction and the value of the transaction should not be lower/higher than the market value according to the data available to the tax authorities and (iii) should be posted in the accounting books of the company and should be evidenced by relevant documentation (i.e. invoices etc.).

Are management fees subject to withholding?

No.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes. Beyond the arm's length principle the general tax requirements will also need to be satisfied, i.e. (i) fees/ expenses should be paid for the benefit of the company or should relate to

the company's usual transactions, (ii) expenses should correspond to a genuine transaction and the value of the transaction should not be lower/higher than the market value according to the data available to the tax authorities and (iii) should be posted in the accounting books of the company and should be evidenced by relevant documentation (i.e. invoices etc.).

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

No. Normally tax returns must not differ from book numbers however, in practice there can be year-end transfer pricing adjustments if they are sufficiently stipulated in writing (e.g. agreements, transfer pricing documentation). They are usually highly scrutinized.

Other unique attributes?

The benchmarking studies used for testing the year under review must cover the most recent three year period of comparable companies. The initial benchmarking study may be updated for the next two years.

No safe harbors exist.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. There are currently 56 Double Tax Treaties between Greece and other tax authorities.

If extensive, is the competent authority effective in obtaining double tax relief?

There is extensive use of the Double Tax Treaties however Greece has limited experience with Mutual Agreement Procedures (MAP).

When may a taxpayer submit an adjustment to competent authority?

Taxpayers may submit a supplementary income tax return with an adjustment any time before a tax audit of the year in question. Any procedures under a tax treaty must take place within a three year period. However, please note that the right to initiate procedures before

the competent administrative bodies is within a 30 day period.

May a taxpayer go to competent authority before paying tax?

There are no formal rules.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. The applicable fees (payable by the applicant) throughout the APA procedure are determined by Ministerial Circular POL. 1284/2013, as follows:

- fee of EUR1,000 at the time of the submission of the Preliminary Consultation Application
- fee of EUR5,000 at the time of the submission of the APA application, or of the APA revision application
- fee of EUR10,000 in the case of a request for collaboration with the foreign tax authority in each state.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

No. There are no precedents on APAs yet. A number of APA applications have been submitted to the Ministry of Finance.

KPMG in Greece

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