



Unofficial translation of the

ADVANCE PRICING ARRANGEMENT REGULATION

2021/R-42

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ADVANCE PRICING ARRANGEMENT REGULATION

1. Introduction and citation

- (a) This Regulation is made pursuant to the authority granted to the Board of the Maldives Inland Revenue Authority by Section 53-1(d) of the Tax Administration Act (Law Number 3/2010).
- (b) This Regulation shall be cited as the “Advance Pricing Arrangement Regulation”.

2. Objective

The objective of this Regulation is to establish policies and procedures for entering into an Advance Pricing Agreement as regards a transaction that a taxpayer intends to enter into with an associate.

3. Who may apply for an Advance Pricing Agreement

An Advance Pricing Agreement may be requested by the following persons:

- (a) A resident of the Maldives who has entered or intends to enter into an international transaction to which Section 68(b) of the Income Tax Act (Law Number 25/2019) applies;
- (b) A non-resident of the Maldives carrying on business through its permanent establishment in the Maldives, who has entered or intends to enter into an international transaction to which Section 68(b) of the Income Tax Act (Law Number 25/2019) applies.

4. Pre-filing consultation

- (a) A person proposing to enter into an agreement under this Regulation shall submit to MIRA a completed “Request for Pre-filing Consultation” (MIRA 923) form together with all the information and documents specified therein.
- (b) The pre-filing consultation shall include the following:
 - (1) Determination of the scope of the agreement;
 - (2) Identification of the controlled transaction;
 - (3) Determination of the suitability of the international transaction for the agreement;

- (4) Discussion of the broad terms of the agreement.
- (c) Where it involves a bilateral or multilateral agreement, the competent authority of the Maldives or the representative of the competent authority of the Maldives shall participate in the pre-filing consultation.

5. Request for an Advance Pricing Agreement

- (a) A person who has completed the pre-filing consultation under Section 4 of this Regulation may request to enter into an Advance Pricing Agreement by submitting a completed "Request for Advance Pricing Agreement" (MIRA 924) form together with all the information and documents specified therein.
- (b) The information collected through the form specified in subsection (a) shall include the following:
 - (1) A description of the taxpayer's business activities, transactions and arrangements which the taxpayer proposes to be included in the Advance Pricing Agreement, the proposed scope and duration of the Advance Pricing Agreement, and an explanation as to how the proposed transaction or arrangement falls within the scope of Section 68(b) of the Income Tax Act (Law Number 25/2019);
 - (2) A description of, including the following information, the proposed transfer pricing methodology for the determination of transfer price through the Advance Pricing Agreement, in accordance with the arm's length principles specified in Section 67 of the Income Tax Act (Law Number 25/2019),
 - (i) Comparability analysis of the proposed transaction;
 - (ii) the most appropriate transfer pricing methodology selected and the basis of such selection;
 - (iii) Critical assumptions;
 - (iv) World-wide organizational structure, history, financial statement data, products, functions and assets (tangibles and intangibles) of any associated enterprises involved.
 - (3) An identification of the associated enterprise that is the party to the proposed transaction or arrangement, and the jurisdiction where such enterprise is resident;
 - (4) Details of any other jurisdiction (s) which the taxpayer wishes to participate in the Advance Pricing Agreement;
 - (5) Any other facts or information which may have a bearing on the current or proposed transfer pricing methodology and underlying data for any party to the request.

- (c) Where any defect is identified in the application for an Advance Pricing Agreement, or, if any required document is not attached thereto, MIRA shall, within a period of 45 (Forty Five) days, notify the applicant to complete the application.
- (d) A period of not less than 30 (Thirty) days shall be granted to the applicant to complete the application as specified under subsection (c).
- (e) Where the application is not completed within the period granted under subsection (d), the MIRA officer in charge in case of a unilateral agreement or the competent authority in the Maldives in case of a bilateral or multilateral agreement, may, after granting a 15 (Fifteen) day period to the applicant to provide an explanation as to why the application was not completed within the specified period, decide not to proceed with the application.

6. Amendment to the request for an Advance Pricing Agreement

- (a) An applicant may request in writing to amend the application for an Advance Pricing Agreement submitted under Section 5 of this Regulation, before a decision is made in respect of such agreement.
- (b) The MIRA officer in charge in case of a unilateral agreement, or, the competent authority in Maldives in case of a bilateral or multilateral agreement, may allow an amendment to the application for an Advance Pricing Agreement as requested by the applicant under subsection (a).

7. Withdrawal of request for an Advance Pricing Agreement

An applicant may, by notice in writing, withdraw the application for an Advance Pricing Agreement at any time before signing the agreement.

8. MIRA's decision regarding the request for an Advance Pricing Agreement

After reviewing the request made under this Regulation for an Advance Pricing Agreement, MIRA's officer in charge in case of a unilateral agreement, or, the competent authority in Maldives in case of a bilateral or multilateral agreement, may make the decision whether or not to proceed with the Advance Pricing Agreement.

9. Information required to be included in an Advance Pricing Agreement

An Advance Pricing Agreement established under this Regulation shall include but not limited to the following information:

- (a) The names and addresses of the enterprises covered by the Advance Pricing Agreement;
- (b) Transactions, arrangements and agreements covered by the Advance Pricing Agreement and the periods covered by the Advance Pricing Agreement;
- (c) A description of the agreed transfer pricing methodology and other related matters such as agreed comparables or a range of expected results;
- (d) Critical assumptions upon which the transfer pricing is based, the breach of which would trigger renegotiation of the agreement;
- (e) Definitions of relevant terms and phrases used in the Advance Pricing Agreement;
- (f) The conditions determined by MIRA, if any, other than those specified in subsection (a) to (e).

10. Failure to comply with the agreement or changes in circumstances

- (a) The Advance Pricing Agreement shall not be binding on the parties to the agreement if there is a change in any of the critical assumptions or conditions subject to which the agreement has been entered into.
- (b) Where any one of the parties is of the opinion that there is a change in a critical assumption or a condition subject to which the Advance Pricing Agreement has been entered into, the other parties to the agreement shall be notified in writing within a period of 5 (Five) days from the date of making such assumption.
- (c) Notwithstanding subsection (a), the binding effect of an Advance Pricing Agreement established under this Regulation shall cease only when the other parties to the agreement have been duly notified.
- (d) Where subsection (a) applies to an Advance Pricing Agreement, such agreement can either be revised or cancelled.

11. Filing of annual compliance report

For every tax year during the term of the Advance Pricing Agreement, an annual compliance report which includes the following information shall be filed together

with the income tax return for the respective year, by 30th June of the immediately following tax year.

- (a) Description of the actual operations of the taxpayer during the tax year to which the report relates;
- (b) Demonstration of compliance with the terms and conditions of the Advance Pricing Agreement;
- (c) Confirmation that the critical assumptions or conditions subject to which the agreement was entered into have been met.

12. Revocation of an Advance Pricing Agreement

- (a) MIRA may revoke an Advance Pricing Agreement in the following circumstances:
 - (1) There was a misrepresentation, mistake or omission, that was attributable to wilful default, in the application made for the Advance Pricing Agreement or in the annual compliance report;
 - (2) The annual compliance report was not filed on time without a reasonable cause;
 - (3) Participating taxpayer(s) failed to materially comply with a fundamental term or condition of the Advance Pricing Agreement.
- (b) Where an APA is revoked under this section, the revocation shall be retroactive to the first day of the first tax year for which the Advance Pricing Agreement was effective.

13. Cancellation of an Advance Pricing Agreement

- (a) MIRA may cancel an Advance Pricing Agreement in the following circumstances:
 - (1) There was a misrepresentation, mistake or omission, that was not attributable to wilful default, in the application made for the Advance Pricing Agreement or in the annual compliance report;
 - (2) The annual compliance report was not filed on time without a reasonable cause;
 - (3) The participating taxpayer(s) failed to materially comply with any one of the terms or conditions of the agreement;
 - (4) There was a material breach of any of the critical assumptions on which the agreement was based;

- (5) There was a change in tax law, or in the tax treaty provisions or provisions of an international agreement, which are materially relevant to the Advance Pricing Agreement, and, such that has not proved possible to revise the agreement to take account of the changed circumstances.
- (b) Where an Advance Pricing Agreement is cancelled under this section, the date of cancellation shall be determined after having considered the circumstances that led to the cancellation.

14. Revising an Advance Pricing Agreement

- (a) An Advance Pricing Agreement may be revised by MIRA where:
 - (1) there is a material change in any of the critical assumptions or conditions subject to which the agreement has been entered into;
 - (2) there is a change in a non-critical assumption;
 - (3) there is a request from the competent authority of the other jurisdiction to revise the agreement in case of a bilateral or multilateral agreement.
- (b) An Advance Pricing Agreement may be revised by MIRA on request of the participating taxpayer.
- (c) Except under subsection (b), the Advance Pricing Agreement shall not be revised unless an opportunity of being heard has been provided to the taxpayer and the taxpayer is in agreement with the proposed revision.
- (d) Where the taxpayer is not in agreement with the proposed revision, the Advance Pricing Agreement may be cancelled in accordance with Section 13 of this Regulation.
- (e) Where MIRA is not in agreement with the request of the taxpayer for revision of the Advance Pricing Agreement, MIRA shall reject such request, in writing, giving reason for the rejection.
- (f) The revised Advance Pricing Agreement shall include the date from which the revised agreement is effective and the date on which the original Advance Pricing Agreement is no longer effective.

15. Bilateral or Multilateral Advance Pricing Agreements

- (a) The following shall apply where a person makes a request for a bilateral or multilateral Advance Pricing Agreement under Section 5 of this Regulation.
 - (1) The process for bilateral or multilateral Advance Pricing Agreement shall be initiated only where the associate(s) of the applicant has

requested, in the jurisdiction of its residence, for an Advance Pricing Agreement in respect of the same transaction(s).

- (2) Where a bilateral or multilateral Advance Pricing Agreement is requested, the competent authority(s) of the other jurisdiction(s) in which the associate(s) of the applicant is resident, shall be notified of such.
 - (3) In case of willingness of the competent authority referred to in subsection (a)(2) to establish such Advance Pricing Agreement, the competent authority of the Maldives shall enter into negotiation in this behalf and endeavour to reach an agreement.
 - (4) In case of failure to reach an agreement on such terms as are mutually acceptable to parties referred to in subsection (a)(3), the applicant shall be informed of the failure to reach an agreement, and, in such cases may opt either to enter into a unilateral agreement or withdraw the Advance Pricing Agreement application.
- (b) In case of willingness to enter into a bilateral or multilateral Advance Pricing Agreement by a competent authority other than the competent authority of the Maldives, the process of the agreement shall not be initiated unless there is a request made in its jurisdiction of residence by the associate of the applicant to enter into an Advance Pricing Agreement as regards the transaction(s).

16. Roll-back

An Advance Price Agreement may be established, after having considered the following factors, as effective retroactively to a tax year for which the deadline for submission of the income tax return has elapsed.

- (a) Time limits set by other participating jurisdictions;
- (b) Relevant facts and circumstances;
- (c) Whether or not there is an ongoing tax audit or investigation;
- (d) Whether or not there is an ongoing court case.

17. Circumstances where an Advance Pricing Agreement cannot be established

An Advance Pricing Agreement cannot be established in the following circumstances.

- (a) The transaction proposed to be covered by the Advance Pricing Agreement is hypothetical or not thoroughly contemplated;

- (b) The transaction proposed to be covered by the Advance Pricing Agreement involves tax avoidance or tax evasion or fraud;
- (c) The substantive matter of the transaction proposed to be covered by the Advance Pricing Agreement is a matter that is pending before a court of law.

18. Costs related to an Advance Pricing Agreement

- (a) MIRA has the discretion to levy a non-refundable application fee in accordance with a procedure determined by MIRA, and where such a fee is levied, the request for an Advance Pricing Agreement shall only be accepted upon payment of the fee.
- (b) Overseas travel expenses incurred by MIRA officers or the competent authority, that are reasonably required in respect of completing an Advance Pricing Agreement, shall be paid to MIRA by the applicant.

19. Confidentiality

Information obtained, and information received by MIRA in the course of establishing an Advance Pricing Agreement shall be considered confidential under the Act.

20. Definitions

For the purposes of this Regulation the following terms and phrases shall have the following meanings.

- (a) "Act" refers to the Tax Administration Act (Law Number 3/2010).
- (b) "Unilateral Advance Pricing Agreement" means an Advance Pricing Agreement, which is neither a bilateral nor a multilateral agreement, established between MIRA and a taxpayer resident in the Maldives.
- (c) "Bilateral Advance Pricing Agreement" means an Advance Pricing Agreement established between MIRA, a taxpayer resident in the Maldives, an associate of that taxpayer and the tax authority of the jurisdiction in which the associate is resident.
- (d) "Multilateral Advance Pricing Agreement" means an Advance Pricing Agreement established between MIRA, a taxpayer resident in the Maldives, and more than 1 (one) associate of that taxpayer and the respective tax authorities of the jurisdictions in which those associates are resident.

21. Commencement of the Regulation

This Regulation shall take effect from the date of its publication in the Government Gazette.