New APA Request Procedure in Chile

This article provides a brief overview of the main modifications introduced by the tax authority in the APA request procedure in Chile under Resolution 114 of 2022.

1. Introduction

Through Resolution 114 of 2022, the Chilean Internal Tax Agency (Servicio de Impuestos Internos, SII) has modified the application process for an advance pricing arrangement (APA) laid down in Resolution 68 of 2013, making it possible to apply online in a system created specifically for this end. Information uploaded into this system will only be accessible to members of the APA team. This new Resolution is applicable to all APA applications presented from 3 December 2022 onwards.

To be able to access this system, taxpayers must be registered. The registration is done by sending an email to area.apa@sii.cl, stating the legal name and tax ID of the company. Once registered, APA applications will be done by accessing the SII webpage (www.sii.cl), clicking on the option “Renta y otras solicitudes/Acuerdos Anticipados de Precios de Transferencia (APA)” under the “Servicios Online” menu, and providing the aforementioned registration information. Once logged in, the taxpayer will be able to upload the documents to support the request. Additionally, the system allows tracking the application’s state throughout the process.

2. Requirements

Regarding the information required for the applications, this remains the same that was needed for Resolution 68 of 2013, namely:

- identification of the legal persons involved in the transaction related to the agreement;
- time this agreement would hold for;
- multinational enterprise group (MNE) structure to which the applicant organization belongs, including the parent company, controllers, other filial companies or associated ones operating in Chile and overseas;
- general financial statements from the last two fiscal years, complying with the SII requirements;
- an explanation on the selection of the transfer pricing policy of the group that specifies the methods used for setting prices and conditions in its related transactions and that these are set according to the arm’s length principle;
- a detailed description about the transactions which the application refers to, functions or activities carried out, assets and risks assumed by each related party involved in the arrangement. It must also contain a general description of the main activities that the entities of the group carry out and where they are located;
- an explanation of the assumptions and economic conditions on which the proposal is based, indicating the circumstances that would change the main results and conclusions obtained;
- a description of the criteria used for selecting the different comparable transactions or companies, pricing or profitability ranges and comparability adjustments realized;
- the specification of the values, prices or profitability involved in the transactions that the application refers to;
- if the application refers to a business reorganization that involves the transfer of functions, assets or risks, the study must specify the commercial benefits that the local entity will obtain as a result of that transfer; and
- any other element of analysis that the taxpayer considers relevant for assessing the transactions involved in the application.

Copy of the contracts with the foreign related parties and a Spanish translation if in a foreign language;
- details of the intellectual property of the patents, brands or other intangible goods related to the operations affected by this arrangement;
- information related to other APAs subscribed by the MNE directly or indirectly related to the application; and
- transfer pricing study.

It is important to mention the requirements that the transfer pricing study provided by the taxpayer in its APA application must fulfill, since they constitute the starting point by which the tax authority carries out its own transfer pricing analysis and assesses the application. In this regard, the requirements of the previous Resolution remain necessary for the new one. According to that, the following information is required:

3. See id.
3. The Way Forward

Returning to the new elements introduced by Resolution 114 of 2022, it is expected that the digital platform will make the communication between taxpayers and the Chilean tax administration easier and so reduce the deadlines involved in the APA procedure, from the presentation of the application to the tax authority’s decision. These kinds of innovations are framed into continuous improvements and a collaborative approach that the SII has adopted in its relationship with the taxpayers. In this sense, Chile is probably one of the most advanced jurisdictions in the South America region in matters related to APAs.

As an OECD member country, and following the guidelines that the OECD established on the subject, the Chilean tax administration created a special team in 2022, separated from that devoted to the transfer pricing risk assessments, whose function is to analyse APA applications and lead the negotiations with the taxpayers. This team comprises six experts from different fields and seeks to ensure a perspective from different angles involved in the transfer pricing cases (legal ones, economic ones and others).

This constitutes an important difference with regard to the previous situation, in which the same team was in charge of doing the transfer pricing risk assessments, designing the audits that the SII carries out and negotiating the APAs simultaneously. The creation of a special team devoted to the APA subjects also provides a signal that the SII gives to taxpayers of its efforts to maintain a collaborative relation with them, in which the new digital platform is a useful tool in that field.

4. Conclusion

The importance of subscribing to these kinds of arrangements is recognized by the tax authority in its tax compliance management plan for 2023, which reports a total amount of USD 653 million of expected tax income due to the subscription of eight APAs. At the same time, in the section devoted to transfer pricing, and as part of the action plan of preventive, facilitation and collaboration measures, the same publication points out that the SII will publicize the new APA application procedure among the taxpayers.

Nowadays, the Chilean jurisdiction is one that has the greatest number of APAs subscribed in the region, surpassed only by Mexico in Latin America. According to the statistics published by the SII, as of September 2022, there had been 16 APA applications, of which 11 were unilateral and five were bilateral. There have been seven arrangements that have been subscribed while six are under negotiation; one of the applications was withdrawn by the applicant and two have been rejected by the SII. These figures reflect the results of the specialization that the SII has implemented in its teams devoted to transfer pricing topics.