

**GUIDELINE  
on ADVANCE PRICING AGREEMENTS**

**UAE DIAN  
AUDIT AND ASSESSMENT PROCESS**

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**GUIDELINE  
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## **GUIDELINE on ADVANCE PRICING AGREEMENTS**

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This document is based on the legislation in force in Colombia regarding advance transfer pricing agreements and the double tax conventions signed by the country.

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**OBJECTIVE**

The purpose of this document is to clarify for taxpayers the procedure for Advanced Transfer Pricing Agreements requests in order to ensure certainty and trust between the parties, by virtue of the Colombian legislation in force and the double tax conventions signed by the country with other States, within the current legal regulatory framework.

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**I. GUIDELINE ON ADVANCE PRICING AGREEMENTS (APA)**

Pursuant to Articles 260-1 to 260-11 of the Colombian Tax Code (hereinafter CTC) and pursuant to Articles 1.2.2.4.1 a 1.2.2.4.10 of Decree 1625 of 2016, this Guideline is issued:

**1. General provisions**

- 1.1. Pursuant to Num. 16 of Article 6 of Decree 4048, dated 22.10.2008, this Guideline creates the procedures for the administration and application of article 260-10 of the CTC, on advance pricing agreements.
- 1.2. The Guideline is to be applied with reference to articles 260-1 to 260-10 of the CTC regulated by Decree 1625 of 2016.

**2. Advance Pricing Agreements: Definition and Types**

- 2.1 An *advance pricing agreement* (“APA”) is an agreement between a Colombian taxpayer and Dirección de Impuestos y Aduanas Nacionales (hereinafter DIAN) that determines, in advance of specified controlled transactions (i.e. the controlled transactions covered by the agreement), an appropriate set of criteria (e.g. transfer pricing method, comparables, appropriate adjustments thereto, and critical assumptions as to future events) for the determination of conditions consistent with article 260-10 of the CTC regulated by articles 1.2.2.4.1 to 1.2.2.4.10 of Decree 1625 of 2016 for those transactions over a fixed period of time.
- 2.2 The types of agreements covered by this Guideline include:
  1. *Unilateral Advance Pricing Agreements* – whereby an agreement is entered into between a taxpayer and DIAN concerning the application of articles 260-1 to 260-4 of the CTC to the specified controlled transactions.
  2. *Bilateral Advance Pricing Agreements* - whereby a taxpayer requests that the Colombian Competent Authority reach agreement with a double tax convention partner concerning the application of the associated enterprises article of the relevant double tax convention to the specified controlled transactions.
  3. *Multilateral Advance Pricing Agreements* – whereby a taxpayer requests that the Colombian Competent Authority reach agreement with two or more double tax convention partners concerning the application of the associated enterprises articles of the relevant double tax treaties to the specified controlled transactions.
- 2.3 Where a bilateral or multilateral advance pricing agreement is entered into by the Colombian Competent Authority and one or more double tax convention partners, the *mutual agreement* (entered into based on the Mutual Agreement Procedure article of the relevant bilateral tax convention) will be the basis for (and consistent with) the advance pricing agreement in Colombia.

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2.4 Paragraph 2.2 (2) and (3) are only applicable to cases where one or more double tax conventions (as relevant), or similar conventions, are applicable and said conventions contain provisions concerning associated enterprises.

**3. Assurance Provided by Advance Pricing Agreements**

3.1 In accordance with article 260-10 of the CTC, where a taxpayer has entered into an advance pricing agreement, no adjustment will be made under article 260-2 of the CTC which states: *“[T]he tax administration, in developing its audit and control faculties, may determine, for tax purposes, the ordinary and extraordinary revenues, their costs and deductions and assets and liabilities generated in transactions carried out by taxpayers with foreign related parties, by means of determining the conditions used in comparable transactions with or between independent parties”,* to the specified controlled transactions, provided the terms and conditions of the advance pricing agreement are satisfied.

3.2 Except in exceptional circumstances (i.e. where it is appropriate based on the particular facts and circumstances of the case) advance pricing agreements will typically not specify the actual taxable profits or income to be taxed in Colombia. Rather, advance pricing agreements will specify an appropriate set of criteria (e.g. transfer pricing method, comparables or comparability factors and appropriate adjustments thereto, critical assumptions as to future events) for the determination of conditions consistent with the arm’s length principle for those transactions over a fixed period of time.

**4. Mutual Expectations of Taxpayers and DIAN**

4.1 Taxpayers can expect DIAN to:

1. Evaluate the taxpayer’s application based on the articles 260-1 to 260-11 of the CTC regulated by Decree 1625 of 2016;
2. Undertake open and ongoing dialogue with the taxpayer throughout the process;
3. Work out the scope of the advance pricing agreement and the treatment approach for any collateral issues where appropriate;
4. Enquire into the controlled transactions, transfer pricing methodology and arm’s length price;
5. Undertake examination of collateral issues, if any, and ask for their revision to the taxpayer;
6. Commit to the agreed scope of the APA, which will only be changed in exceptional circumstances;
7. Provide timely guidance on the progress of the taxpayer’s application for an APA;
8. Work with the taxpayer to agree on the information/documentation required in the development of the APA;
9. Work actively with the tax convention partner(s) in the development of a bilateral/multilateral APA;
10. Have the right to withdraw from the APA process at any time before final agreement on the APA is reached;

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11. Keep information confidential in accordance with the secrecy provisions of article 583 of the CTC and article 1.2.2.4.3 of Decree 1625 of 2016 and the Exchange of Information Article in the relevant tax convention (or treaties); and
12. Apply the APA process consistently and accelerate the APA process to align with the process of the other tax convention partner(s) in a bilateral/multilateral APA.

4.2 DIAN (and Colombian Competent Authority where relevant) can expect the taxpayer to:

1. Co-operate fully with DIAN (and Competent Authority where relevant) throughout the process;
2. Provide information to DIAN in a timely manner;
3. Propose approaches that are consistent with transfer pricing legislation and the Colombian transfer pricing guidance issued;
4. Seek an APA only on controlled transactions that are current and continuing in nature;
5. Make full and true disclosure of all relevant and material facts with respect to the controlled transactions and collateral issues, if any;
6. Work with DIAN towards agreement on the scope of the APA and the treatment approach for collateral issues, if any;
7. Disclose any reasonably arguable position sought to apply in connection with the controlled transactions and collateral issues, if any;
8. Provide the same information/documentation to all tax convention partner(s) which are proposed parties to the bilateral/multilateral APA;
9. Provide information/documentation commensurate with the complexity of the arrangement and the level of risk; and
10. Have the right to withdraw from the APA process at any time before final agreement on the APA is reached.

Failure to comply with the mutual expectations by either DIAN or the taxpayer will not allow the APA to be negotiated (or concluded).

**5. Eligibility**

- 5.1 It is suggested that requests for advance transfer pricing agreements be considered for transactions that due to their analysis or amount merit the signing of an Agreement and that the transactions exceed 100,000 UVT in the year prior to the request or, if the transaction is new, 100,000 UVT in the year of the request (according to projections), taking into account the time and the economic, human and administrative resources required for the development of an APA programme.

**6. Maximum Covered Period**

- 6.1 The commencement date for the APA must be the tax year in which the APA is signed between the taxpayer and DIAN.
- 6.2 The maximum covered period for advance pricing agreements is 5 years; APAs may cover

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the taxable year in which the agreement is concluded, the prior year (commonly referred to as “rollback” years), and up to the three following years, according to article 260-10 of the CTC, except where the advance pricing agreement concerns the implementation of a mutual agreement procedure (see paragraph 2.3).

**7. Scope of Request and Treatment of Collateral Issues**

- 7.1 The scope of advance pricing agreements is limited to agreement concerning the application of the arm’s length principle to controlled transactions as defined in articles 260-2 and 260-3 of the CTC.
- 7.2 Where the controlled transactions to be covered by the APA are covered by an applicable tax convention, applications should be made for bilateral or multilateral APAs. Applications for unilateral APAs in such cases will only be accepted on an exceptional basis (for example, where the tax convention partner is not willing to enter into negotiations).
- 7.3 Where collateral issues (such as deductibility, applicability of withholding taxes, existence of permanent establishment, attributions of profits to a permanent establishment and so forth) are identified during the pre-filing, formal application or evaluation stage, these issues should be revised by the taxpayer in order to continue with the formal application stage. Collateral issues will not be dealt with in the advance pricing agreement itself and the agreement will be negotiated or entered into without prejudice to such issues.
- 7.4 DIAN reserves the right to add additional covered transactions to the taxpayer’s advance pricing agreement request when the transactions are so interrelated that they must be analyzed together.

**8. Right of Withdrawal and Refusal**

- 8.1 In the case of unilateral advance pricing agreements, the taxpayer or DIAN may, at any time during the process, withdraw from the process if it appears clear that they will be unable to successfully conclude an advance pricing agreement. Withdrawal must be communicated in writing and the reasons for withdrawal must be clearly specified. It is expected that withdrawal will be the result of conduct inconsistent with paragraph 4.
- 8.2 If no agreement is reached, any of the parties may withdraw from the APA programme through a written communication.
- 8.3 In the case of bilateral or multilateral advance pricing agreements, the taxpayer may communicate in writing at any time its intention to refuse to accept the outcome of the negotiations, and to not enter into an APA. This will however be without prejudice to whether or not the Colombian Competent Authority withdraws from negotiations with the tax convention partner(s).
- 8.4 In the event that a mutual agreement is reached between the Colombian Competent Authority



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and its tax convention partner(s), the taxpayer may reject the agreement by way of refusal to enter into an advance pricing agreement. In such cases however, the taxpayer forfeits the right to application for mutual agreement procedure in relation to the controlled transactions covered by the mutual agreement. In addition, the taxpayer also forfeits the right to any unilateral APA in respect of the controlled transactions in question.

**9. Advance Pricing Agreement Process**

9.1 The advance pricing agreement process in Colombia comprises of 6 stages:

*Stage 1 – pre-filing meeting (optional)*

*Stage 2 – formal application*

*Stage 3 – evaluation*

*Stage 4 – negotiation*

*Stage 5 – drafting and execution*

*Stage 6 – annual compliance*

9.2 Each of the 6 stages is elaborated in detail in Paragraphs 10-15 of this Guideline.

**10. Pre-filing meeting (Stage 1)**

10.1 The pre-filing meeting is highly recommended to the taxpayer to obtain an APA in Colombia. The goal of the pre-filing meeting is to allow all parties to assess the likely success of a proposed advance pricing agreement. It allows DIAN to have a context of the transaction and the viability of the request as well as clarify upfront the expectations of both sides.

10.2 To enable assessment of the likely success of the proposed advance pricing agreement, an application for a pre-filing meeting must be made along with a PPT presentation that contains the information specified in questionnaire form included in Appendix 1.

10.3 Pre-filing meetings may be held on an anonymous basis if sufficient information is provided by the taxpayer or their representative as part of the pre-filing questionnaire in Appendix 1.

10.4 Upon receipt of the pre-filing questionnaire, DIAN will contact the taxpayer or its representative to discuss an acceptable time and place for the meeting.

10.5 Additional pre-filing submissions or materials for presentation at the pre-filing meeting are to be submitted to DIAN in advance of the scheduled pre-filing meeting or the meeting may be rescheduled.

10.6 Any statements or representations made during the pre-filing meeting by DIAN do not constitute formal advice concerning the proposed application and are not binding on DIAN.

**11. Formal application (Stage 2)**

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- 11.1 If the Colombian taxpayer intends to proceed with a formal application for an advance pricing agreement as set out in the pre-filing meeting, application for an advance pricing agreement must be made in accordance with the information listed in Appendix 2, taking into account the eligibility criteria in paragraph 5 of this Guideline.
- 11.2 If the Colombian taxpayer decides to enter into an APA process through representation by an external advisor, a legal power of attorney must be filed by the taxpayer as part of the formal application.
- 11.3 If the request is for a bilateral or multilateral APA, the taxpayer should submit the APA application at the same time to the competent authorities of all relevant tax jurisdictions.
- 11.4 DIAN, according to articles 260-10 of the CTC and 1.2.2.4.4 of Decree 1625 of 2016, will acknowledge receipt of the formal unilateral APA application in writing via an *acknowledgement letter* within 9 months of the confirmed receipt of the application in DIAN's headquarters. For bilateral and multilateral APA applications, the acknowledgement letter will be issued within the timeframe jointly determined by the Colombian Competent Authority and one or more double tax convention partners. The acknowledgement letter will include whether the application has been accepted or not.

In the event that the request is rejected, no appeal will proceed against the actions carried during this stage, in accordance with Article 260-10 of the CTC and subsection 3 article 1.2.2.4.4 of Decree 1625 of 2016.

- 11.5 If the application is accepted, the acknowledgment letter could state the following:
  - 1. Whether the APA application is substantially complete based on the required information stated in Appendix 2;
  - 2. Contact information for DIAN officials assigned to evaluate the application.
- 11.6 If the application is rejected, the reasons for the rejection will be stated in an official statement. The following are possible reasons that would determine that the APA application would not be accepted:
  - 1. The transactions proposed to be covered by the advance pricing agreement are not considered appropriate for an advance pricing agreement;
  - 2. The taxpayer has a poor compliance history;
  - 3. There are complex collateral issues that require resolution prior to consideration of an advance pricing agreement (for example, existence of a permanent establishment and other material considerations); or
  - 4. Transactions carried out with low or non-tax jurisdictions.
  - 5. Operational capacity
  - 6. Other

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- 11.7 An accepted APA application does not suggest or determine with certainty that DIAN and the taxpayer will conclude an advance pricing agreement, or ensure that the proposed method will be ultimately used. However, an accepted APA application does signify that DIAN will undertake the procedures as stated in Paragraph 12 and 13 of this Guideline, subject to completeness as stated in Appendix 2.
- 11.8 For bilateral APA applications, as soon as is administratively practicable, the Colombian Competent Authority will contact the tax convention partner(s) and enquire whether it/they wish(es) to proceed with the application within the context of the tax convention.

**12. Evaluation (Stage 3)**

- 12.1 Once the APA application is accepted and determined to be substantially complete, DIAN will perform a critical analysis of the APA application rather than undertaking original work to establish the arm's length outcome. Nevertheless, DIAN may undertake original work, including fieldwork, where the circumstances warrant.
- 12.2 During the evaluation of an advance pricing agreement, DIAN may undertake the following activities as part of the analysis:
1. Request the taxpayer to provide additional information, including information concerning related parties;
  2. Request meetings with the taxpayer in order to discuss specific issues;
  3. Undertake field research and site visits to inspect the operations of the taxpayer;
  4. Interview personnel of the taxpayer;
  5. Request relevant information from tax convention partners under exchange of information in accordance with the relevant provisions of an applicable tax convention;
  6. Exercise any powers under Colombian law relevant to the evaluation of the agreement; and/or
  7. Other activities considered useful during the process.
- 12.3 Where DIAN arrives to a position that is different from that contained in the taxpayer's application, it will discuss it with the taxpayer. DIAN will seek the taxpayer's agreement on its position or reconcile both positions to reach a mutually acceptable agreement with the taxpayer.
- 12.4 During the evaluation of the advance pricing agreement, the taxpayer is required to:
1. Make its personnel and premises available for interview and inspection respectively; and
  2. Obtain and provide all the information including that concerning the associated parties.
- 12.5 If the application is bilateral or multilateral under the premise of a Colombian tax convention, the following procedures will apply:

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1. The taxpayer must advise the Colombian Competent Authority of the information/documentation requested by the tax convention partner(s) in relation to the application and must ensure that the Colombian Competent Authority is provided with copies of any information/documentation supplied to the tax convention partner(s), whether supplied by itself or an associated party;

**13. Negotiation (Stage 4)**

***Unilateral APA***

- 13.1 Once DIAN conclude their analysis, they will inform the taxpayer their position, and detail the extent to which their position is different from the taxpayer's proposal in the application.
- 13.2 In case there are differences between the taxpayer and DIAN's position, the taxpayer must provide clarification regarding the transfer pricing method or other terms of the proposed APA.
- 13.3 After receiving the taxpayer response as stated in 13.2, if there are still differences between positions, DIAN will make itself available to discuss the issues in an effort to reach agreement.
- 13.4 If no agreement is reached, any of the parties may withdraw from the APA programme through a written communication, as stated in 8.1 and 8.2.

***Bilateral or Multilateral APA***

- 13.5 In the case of bilateral or multilateral APA, DIAN will exchange position papers with the foreign competent authority (ies) party (ies) to the APA, and the following procedures will apply:
  1. The Colombian Competent Authority may have in-person meetings with the foreign competent authority party to the APA;
  2. The taxpayer does not have the right to see position papers or other materials exchanged in writing between competent authorities as part of the negotiation process. Such documents are provided under the mutual agreement procedure of the tax convention, which limits their use and disclosure;
  3. The taxpayer does not have a right to be present at Competent Authority negotiations, except where approval for presentation at Competent Authorities meetings has been obtained from all the Competent Authorities concerned; and
  4. The Colombian Competent Authority will keep the taxpayer updated on the status of the bilateral negotiations and communicate any timetable agreed with the other Competent Authority, as appropriate.
- 13.6 If an agreement is reached with the foreign competent authority, a written mutual agreement which specifies the acceptable transfer pricing method, its application and critical

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assumptions assuming that agreement is to be exchanged. The mutual agreement may be in any form agreed to by the Competent Authority (i.e. exchange of letters or a formal document).

- 13.7 The taxpayer can either accept or reject the mutual agreement for the APA. In case of a rejection, the taxpayer must notify the Colombian Competent Authority in writing following the mutual agreement rejection.
- 13.8 Where the mutual agreement is accepted, DIAN will draft an APA based on the mutual agreement and will present it to the taxpayer for signature. The taxpayer is required to sign the final APA and return it to DIAN.
- 13.9 There may be circumstances where the Colombian Competent Authority is unable to reach agreement with the tax convention partner (or partners) within a reasonable timeframe. Under such circumstances, the taxpayer may apply for a unilateral APA.
- 13.10 In the case of all APAs, the content of the concluded agreement (transactions covered, legal entities covered, period covered, transfer pricing method applied, results, and other relevant considerations) agreed in the APA may differ from those proposed in the taxpayer's application.

**14. Drafting and Agreement (Stage 5)**

- 14.1 For all agreed APAs, DIAN will prepare an advance pricing agreement and will summon the taxpayer to DIAN for signature and execution.

***Form and content of concluded APAs.***

- 14.2 According to article 1.2.2.4.7 of Decree 1625 of 2016, a concluded APA may generally contain at least the following information:
  - 1. Date and place of signature.
  - 2. Identity of the taxpayer that signs the Agreement.
  - 3. Reasons for which DIAN approves the proposal.
  - 4. Applicant's obligations under the Agreement.
  - 5. Fundamental circumstances of the Agreement supporting the methodology applied.
  - 6. Description of each of the transaction types referred to in the Agreement.
  - 7. Currency or currencies in which the transactions are effected.
  - 8. Methodology adopted to determine the transfer prices of the transactions covered.
  - 9. Tax periods in which the Agreement is applicable.
  - 10. Guidelines to determine in advance a reasonable departure from the assumptions established.
  - 11. Causes that give rise to cancellation or termination.
  - 12. Commitment to send a report to DIAN demonstrating that the transfer prices fulfil the terms of the Agreement.

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13. Signatures of the parties.

***Critical assumptions***

- 14.3 An APA will define in advance the critical assumptions, including those that are not controlled by the taxpayer nor DIAN. They can be any fact about the taxpayer, an affiliate, a third party, an industry or general economic conditions. The assumption is critical if its realization may significantly affect the appropriateness of the substantive terms of the APA or the basis upon which it was agreed. Critical assumptions are by their nature vital to the APA and should be drafted carefully to ensure the capability of the APA to reflect arm's length pricing, and also be limited in order to protect the certainty of the APA.
- 14.4 If there is a realization of a critical assumption and agreement on a revised transfer pricing methodology cannot be reached after discussion with the taxpayer or with the tax convention partner(s), where applicable, DIAN may cancel the advance pricing agreement such that it will not be applicable for the tax period in which the realization of a critical assumption is determined nor for any other remaining period under the term of the advance pricing agreement.
- 14.5 The taxpayer must notify DIAN that a critical assumption has been realized and submit supporting documentation with a proposed course of action (e.g. revision of the APA) within the following two (2) months as from the realization of the critical assumption, according to Paragraph 1 of Article 1.2.2.4.8 of Decree 1625 of 2016.
- 14.6 DIAN could assess whether arm's length parties could reasonably have been expected to foresee or anticipate the event or circumstances at the time the APA was entered into and whether the agreed transfer pricing methodology has sufficiently taken this into account. DIAN could use the arm's length test to determine whether arm's length parties would have renegotiated such an arrangement due to the change in critical assumptions.

In accordance with Paragraph 1 of Article 1.2.2.4.8 of Decree 1625 of 2016, having examined the submitted documentation, DIAN may, within two (2) months as from the notification date, in a motivated resolution:

1. Approve the amendment, case in which the amended Agreement shall have effect in the tax period in which the amendment was requested and until the end of the term of the initial Agreement.
2. Reject the request for modification, in which case, the Agreement will be canceled, having no effect as of the taxable year in which the significant variations from the assumptions taken into account at the time of the signing of the Agreement occurred, in accordance with the provisions of numeral 2 of Article 1.2.2.4.9 of Decree 1625 of 2016.

If a revised APA cannot be amended, the APA will be cancelled as from the taxable year in which the event giving rise to the change in circumstances occurred leaving it without effect.

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14.7 Similarly, and in accordance with Paragraph 2 of Article 1.2.2.4.8 of Decree 1625 of 2016, if DIAN determines that significant changes have arisen in the assumptions considered in the initial Agreement, it may notify the taxpayer accordingly. The taxpayer shall have one (1) month as from the notification date to prepare a duly supported amendment or to explain and verify the reasons for considering that there have been no substantial changes justifying the amendment of the Advance Pricing Agreement.

If by the end of this period the taxpayer has not submitted the relevant amendment or has not explained in writing and sufficiently verified the reasons for not doing so, DIAN shall cancel the Agreement, by means of a duly motivated resolution, leaving it without effect as from the taxable year in which the significant variations from the assumptions taken into account at the time of the signing of the Agreement occurred, in accordance with the provisions of numeral 3 of Article 1.2.2.4.9 of Decree 1625 of 2016.

**15. Annual Compliance (Stage 6)**

15.1 DIAN may audit a taxpayer that is party to an advance pricing agreement as part of its regular tax audit. Formal requirements must be complied with even with respect to the transactions covered by the APA.

15.2 For each of the tax periods covered by the advance pricing agreement, the taxpayer is obliged to submit to DIAN a completed APA Annual Compliance Notice. The form and content of the *APA Annual Compliance Notice* is specified in Appendix 3 of this Guideline.

15.3 Due date for submission of the *APA Annual Compliance Notice* is the due date for the submission of the “Transfer Pricing Return”. In case the transaction covered by the APA is the only transaction subject to transfer pricing, the annual compliance notice may be presented together with the financial statements through the electronic information services, as required by DIAN in accordance with paragraph 1 of article 1.2.2.4.6 of Decree 1625 of 2016.

15.4 If the taxpayer fails to submit the annual compliance notice, or submits an inaccurate or incomplete annual compliance notice, this will be considered to be non-compliance with one of the provisions of the advance pricing agreement for the purposes of paragraph 16 of this Guideline.

15.5 Taxpayers that have negotiated an APA may be revised by DIAN with respect to the covered transactions for the purpose of demonstrating their compliance with the Arm’s Length Principle and with the conditions set in the agreement, in accordance with Article 1.2.2.4.10 of Decree 1625 of 2016.

**16. Non-compliance with Agreement**



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- 16.1 If one or more provisions of an advance pricing agreement are breached, DIAN may, subject to and in accordance with Paragraphs 17-19 of this Guideline revise, cancel or revoke the advance pricing agreement.
- 16.2 Paragraphs 17-19 of this Guideline are applicable in all cases and may not be overridden by the provisions of a specific advance pricing agreement.

**17. Revision**

- 17.1 DIAN or the taxpayer may revise the provisions of a unilateral advance pricing agreement, according to the provisions of article 1.2.2.4.8 of Decree 1625 of 2016, whereby:
1. The taxpayer failed to comply with one or more of the provisions of the advance pricing agreement;
  2. There is a realization of one or more critical assumptions; and/or
  3. Both DIAN and the taxpayer have expressed, in writing, a desire to revise the provisions owing to changes in the economy or other relevant considerations.
- 17.2 The effective date of any revision shall be mutually agreed between DIAN and the taxpayer.
- 17.3 In the case of a revision of a mutual agreement, the advance pricing agreement that implements that mutual agreement will, in so far as required, be revised accordingly.

**18. Cancellation**

- 18.1 According to numerals 1, 2 and 3 of Article 1.2.2.4.9 of Decree 1625 of 2016, DIAN may cancel a unilateral advance pricing agreement whereby:
1. The taxpayer failed to comply with one or more of the provisions of the advance pricing agreement;
  2. There was a material realization of one or more of the critical assumptions; and/or
  3. Where paragraph 17 is applicable but no agreement is able to be reached between DIAN and the taxpayer.
- 18.2 The effect of cancellation is such that it is deemed that the advance pricing agreement will cease to be applicable from and including the tax year in which the event occurred. The effect of the cancellation is such that DIAN and the taxpayer will no longer be bound by the agreement as of the taxable year in which the agreement was cancelled.
- 18.3 In the case of bilateral or multilateral advance pricing agreements, agreement shall be cancelled only in accordance with the provisions of the agreement reached between the competent authorities.

**19. Revocation**

- 19.1 According to numeral 4 Article 1.2.2.4.9 of Decree 1625 of 2016, DIAN may revoke a



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unilateral advance pricing agreement whereby:

1. Establishes that during any of the negotiation or subscription stages of the Agreement or during the term of the Agreement, the taxpayer provided information that does not correlate with reality.
- 19.2 The effect of revocation is such that it is deemed that the advance pricing agreement had never been concluded.
- 19.3 The Agreement will be ineffective as from the date it was signed, by means of a duly motivated resolution.
- 19.4 In the case of bilateral or multilateral advance pricing agreements, the agreement shall be revoked only in accordance with the provisions of the agreement reached between the competent authorities.

### **20. Termination by Mutual Agreement**

- 20.1 At any time during the term of validity of the Agreement, the parties may take the decision to terminate the Agreement, which shall be duly recorded in a Termination Act, against which no appeal may be filed.
- 20.2 The Agreement will turn ineffective as of the taxable year in which the Termination Act is signed by mutual agreement.

### **21. Confidentiality**

- 21.1 In accordance with Article 583 of the CTC and Article 1.2.2.4.3 of Decree 1625 of 2016, the information presented by the taxpayer during a pre-filing meeting, in the application, during negotiations and in the final agreement is confidential and shall represent a tax secret. However, DIAN does retain the right to publically disclose statistical information on an anonymous basis.
- 21.2 The documentation and information submitted for an Advance Pricing Agreement shall have effect only in relation to that procedure and shall be used exclusively with respect thereto, except when the agreement is revoked or canceled due to non-compliance, or when the information and documentation provided constitutes tax abuse.
- 21.3 With respect to bilateral or multilateral APAs, the Exchange of Information article of the relevant tax convention applies to exchange of information for the purposes of the provisions of the MAP Article. Confidentiality of information exchanged for purposes of the APA under the MAP Article is thus ensured.

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**II. APPENDIXES**

**Appendix 1 - Pre-filing Questionnaire**

To request a pre-filing meeting with the Republic of Colombia, please complete the following form and email it to [preciostransferencia@dian.gov.co](mailto:preciostransferencia@dian.gov.co).

Per this guideline, Paragraph 10.4, you will be contacted to discuss scheduling the conference. Per Paragraph 10.5, additional pre-filing submissions or materials for presentation are due at least one week in advance of the meeting or the meeting may be rescheduled. For more information on pre-filing submissions please see Section 10 of this guideline.

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**General Information**

1. Date:
2. Colombia Taxpayer Name (or Anonymous):
3. Taxpayer Registration Number (unless Anonymous):
4. Taxpayer Representative Name and Contact Information:
5. APA Term Requested (taxable years 20xx to 20xx):
6. Type of APA Requested:     Unilateral             Bilateral             Multilateral
7. Principal foreign jurisdiction (s) involved in APA covered transaction(s):

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**Proposed Covered Transactions**

8. Description of Covered Transaction(s):
  9. Covered Transaction Amount (COP\$):
  10. Brief Industry/Business Description:
  11. Proposed TPM(s):
  12. Proposed Profit Level Indicator and Range (or Point):
  13. Proposed Tested Party:
-

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**Appendix 2- Required APA Application Contents & Filing Information**

*The list of required application contents provided below is not intended to be exhaustive, but rather a list of required information for the application to be accepted by DIAN to comply with article 1.2.2.4.7 of Decree 1625 of 2016 and paragraph 10.1 of this guideline. Further information may be requested as part of the evaluation process.*

Income taxpayers that effect controlled transactions may request in writing an Advance Pricing Agreement with the Directorate of National Taxes and Customs. The request shall be signed by the taxpayer that effects the transactions in question and shall be submitted to the General Director of DIAN.

The application for an Advance Pricing Agreement shall contain the following information:

1. Name or company name, tax identification number, country of residence, domicile and address of the taxpayer and of the related party or parties covered by the Agreement requested.
2. General description of the core business and additional activities carried on by the requesting party and its related party or parties with which the transactions referred to in the Agreement are concluded. National and international organisational structure, composition of share capital and main agreements having an impact on the financial statements entered into by the related parties involved in the transaction.
3. Description of the content of the intended Agreement, describing each type of transaction covered by it, and indicating the currency in which the transactions are expected to be carried out.
4. Description and justification of the fundamental assumptions of the Agreement, taking into consideration the following basic aspects, as applicable in each specific case:
  - 4.1 Colombian tax legislation and the provisions of international treaties, if applicable, entered into by Colombia with the country or countries in which the related party or parties have their residence or domicile.
  - 4.2 Tariffs, customs duties, import restrictions and other government regulations affecting foreign trade.
  - 4.3 Economic conditions, market share and conditions, sales volume and final selling price.
  - 4.4 Nature of the functions, assets employed and risks incurred by the enterprises participating in the transactions covered by the Agreement.
  - 4.5 Exchange rate, interest rate and credit rating.
  - 4.6 Capital and administration structure.
  - 4.7 Financial accounts and classification of revenue, costs, expenses, assets and liabilities.
  - 4.8 The enterprises that will operate in countries other than Colombia and the legal form that their operations will take.
5. Detailed explanation of the proposed transfer pricing methodology, providing examples of its application in the previous three (3) tax periods. Where for verifiable objective reasons

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there is no historical information on such application, it shall be presented based on estimated figures, taking into account the provisions of Articles 1.2.2.2.1.3. and 1.2.2.2.1.5. of Decree 1625 of 2016. Along with the request for an Advance Pricing Agreement, the information described in Article 1.2.2.2.1.5. of Decree 1625 of 2016 must be included, as well as the following:

- 5.1 General information relating to this type of agreements, treaties or pricing proposals approved or being processed by tax administrations of other States.
- 5.2 General information on other types of transaction effected between the related parties that will not be covered by the Agreement, including a brief explanation of the reasons for excluding them.
- 5.3 Any other information that the taxpayer may deem relevant.

For documents issued in a language other than Spanish, the provisions of paragraph 2 of Article 1.2.2.2.1.1 of Decree 1625 of 2016 must be taken into account.

### **Supplemental Requirement for Bilateral or Multilateral Advance Pricing Agreements**

#### **Agreement and Declaration**

I agree that all documents and information submitted to the DIAN for the purpose of the APA application may be provided to the competent authority(ies) of the relevant tax convention partner(s) for processing the APA. I also undertake to send the same documents and information to the competent authority(ies) of the relevant tax convention partner(s) according to their requirements. I declare that I have examined the application, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the application are true, complete and accurate.

Name of Colombian company: \_\_\_\_\_

Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

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**Appendix 3- APA Compliance Information**

In accordance with this Guideline on Advance Pricing Agreements (APAs), the Colombian taxpayer will submit the following Annual Compliance Report as an attachment to the annual Transfer Pricing Return.

**Section I: APA Summary Information**

1. Colombia Taxpayer Name:
2. Taxpayer Registration Number:
3. Taxpayer Representative Name and Contact Information:
4. APA Term (taxable years 20xx to 20xx):
5. This Annual Report Summary is for Taxable Year Ending:
6. Type of APA:    Unilateral                       Bilateral                       Multilateral
7. Principal foreign jurisdiction (s) involved in APA covered transaction(s):
8. Has this APA been amended?    Yes     No    If Yes, Effective Date:
9. Has the Colombian taxpayer complied with all APA terms and conditions?    Yes     No
10. Has the Colombian taxpayer triggered any critical assumptions detailed in the APA?  
 No        Yes (If yes, attach additional statement with explanation)
11. Are any compensating adjustments required under the terms of the APA?  
 No        Yes (If yes, attach additional statement with explanation of compensating adjustment and where the compensating adjustment was reflected in the income tax return.)
12. Are there any material differences between the Colombian taxpayer’s business operations (including functions, risks assumed, markets, contractual terms, economic conditions, property, services, and assets employed) during the current APA Year from the business operations described in the APA agreement?  
 No        Yes (If yes, attach additional statement with explanation)
13. Are there any material changes in financial or tax accounting methods or principles employed for the APA year in respect of the covered dealings, which differ from the financial or tax accounting methods employed and reflected in the APA agreement?  
 No        Yes (If yes, attach additional statement with explanation)

**Section II: Transfer Pricing Method**

14. APA Tested party is:    Colombian Taxpayer    Foreign     Both
15. APA tests on (check all that apply):    Annual basis     Multi-Year basis
16. APA provides (check all that apply):    Range     Point        Floor only    Ceiling only  
 Other (please specify):
17. APA provides for adjustment (check all that apply) to:    Median    Other point (please specify):

**Section III: Annual Compliance Report**

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Please provide the following additional information to demonstrate compliance with the APA referenced above:

1. Types of transaction to which the Agreement has been applied and which have been effected during the tax period to which the informative return relates.
2. Prices, considerations or profits margins applied to the transaction types mentioned in the previous letter as a result of the application of the Agreement.
3. Description of the fundamental assumptions of the Agreement and the manner in which they are still being fulfilled.
4. Additional items as may be appropriate to the particular circumstances of the Colombian taxpayer as it pertains the referenced APA.

DIAN will review the Annual Compliance Report and, if necessary, may request further information that is reasonably needed to verify that the Colombian taxpayer referenced in this APA Annual Report has complied with the terms and conditions of the APA.

If the Colombian taxpayer fails to provide the Annual Compliance Report or supply the additional information requested within as stated in this guideline Paragraphs 14.7, 15 and 18, DIAN may cancel the APA.

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**Change Description**

Version	Validity		Change Description
	Since	To	
1	11/06/2019	--	Initial Version

<b>Elaborated by:</b>	Andrea Medina Rojas	Head of the International Tax Unit	International Tax Unit
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<b>Approved by:</b>	Liliana Andrea Forero Gómez	Director of the Legal Unit	Legal Unit
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