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NAFA Order no. 827/2026 – Advance Pricing Agreement (APA)

The Order, published in the Official Journal of Romania, no. 543 of 2 July 2026, approves the Procedure for the issuance and modification of APAs together with the required application documentation.

NAFA Order no. 828/2026 – Transfer pricing file

The Order, published in the Official Journal of Romania, no. 543 of 2 July 2026, establishes the materiality thresholds for the value of transactions, the terms and content of the transfer pricing file, as well as the transfer pricing adjustment/ estimation procedure.

Two orders of the President of the National Agency for Fiscal Administration (NAFA) have been published in the Official Journal of Romania, Part I, no. 543 of 2 July 2026, introducing new rules governing the issuance of Advance Pricing Agreements and the preparation of transfer pricing documentation.

NAFA Order no. 827/2026 – Advance Pricing Agreement

The Order approves the Procedure for the issuance and modification of APAs together with the required application documentation. The main elements are:

- the APA may be requested for a future transaction or for a previous period (through separate requests), excluding the request for an exclusively retroactive agreement;
- prior to submitting the application, the taxpayer may request a preliminary discussion with the tax authority;
- the application for issuing or amending an APA may be rejected where: i) the supporting documentation is incomplete, ii) the taxpayer fails to provide the requested information within the prescribed deadline, iii) the application for extending the APA is submitted too late, iv) the information provided is inaccurate or misleading, or v) the legal requirements are otherwise not met. For bilateral and multilateral APAs, rejection is subject to prior consultation and agreement between all competent tax authorities involved;
- an APA may be issued for a period of up to five years and may also be extended retroactively to cover up to five previous fiscal years, provided that the relevant transactions are sufficiently comparable in terms of the parties involved, their functional profile and the contractual remuneration arrangements. Where no written agreement exists, comparability must be demonstrated based on the actual conduct of the parties, the available supporting documentation and the functional analysis;
- a retroactive APA cannot cover periods that have already been subject to a completed corporate income tax audit;
- the beneficiary is required to submit an annual report through Spațiul Privat Virtual (SPV); failure to submit the report results in the cancellation of the APA for the period following the last fiscal year for which the annual report was filed;
- Annex 2 of the Order details the content and structure of the documentation required for issuing the APA, including the requirements regarding the comparability analysis and the content of the annual report; compared to the previous legislation, the new content requirements additionally provide for the presentation of a complete overview of intra-group transactions, in accordance with Annex 3.

II. NAFA Order no. 828/2026 – Transfer pricing file

The Order establishes the materiality thresholds for the value of transactions, the terms and content of the transfer pricing file, as well as the transfer pricing adjustment/estimation procedure.

- **Documentation obligations and deadlines:**
    - **large taxpayers** must prepare transfer pricing documentation annually for each related party where the value of the relevant transactions exceeds the following materiality thresholds (EUR 100,000 for services, EUR 200,000 for interest, EUR 250,000 for intangible assets/royalties, EUR 350,000 for tangible assets);
    - **the transfer pricing file must be submitted by large taxpayers through the SPV** within 30 working days of the deadline for the corporate income tax return, under the signature of the legal representative; where non-submission is established during a tax inspection, the deadline for presenting the file at the request of the inspectors is five working days;
    - **small and medium-sized taxpayers** prepare the file only upon request of the tax authority, during a tax inspection, for lower materiality thresholds (EUR 50,000 for services, EUR 100,000 for interest, EUR 150,000 for intangible assets/royalties, EUR 200,000 for tangible assets);
    - the deadline for presenting the file for small and medium-sized taxpayers is extended to 30-60 working days, with the possibility of an extension of up to 30 working days; these taxpayers will present the file only upon request of the tax authority in the context of a tax inspection;
    - the thresholds apply per individual controlled transaction with each related party.
- **Rules regarding the content of the file:**
    - clarifying what constitutes an incomplete transfer pricing file and identifying the specific missing elements that may lead to such qualification;
    - aligning the group information section with the Master File content recommended by the OECD Transfer Pricing Guidelines;
    - requiring taxpayers to describe the activities performed by each department (including changes during the fiscal year), identify strategic and operational decision-makers relevant to the controlled transactions, and explicitly justify the functional profile of the tested entity, including whether it should be characterized as a limited-risk or full-risk entity;
    - introducing detailed requirements regarding: the cost base structure of the selected profitability indicator; the comparability adjustments made and their justification; the quantification of the impact of adjustments on the analysis result; the presentation of the financial information underlying the calculation of the indicators used; and the presentation of costs re-invoiced without a mark-up (*pass-through*).

- **Comparability studies:**
    - format for presenting the comparability study: Excel format with quantitative selection formulas, justification of each selection criterion, presentation of accepted and rejected companies with their identification data, as well as the calculations underlying the result of the analysis;
    - where the tested party is tax resident in Romania, the comparability analysis is performed based on comparables identified in Romania. Where insufficient comparables are identified, the search is extended to the level of the EU (including the United Kingdom), EMEA (Europe, Middle East and Africa), and subsequently to international level;
    - **new rule on the non-resident tested party**: the analysis will have to be carried out starting from comparables based in the jurisdiction of the tested party. Where insufficient comparables are identified, the search is extended to the region from where tested party is based. The regions are: EU (including the United Kingdom), EMEA (Europe, Middle East and Africa), APAC, the Americas and subsequently to international level;
    - where the tested party is not the taxpayer preparing the file, that taxpayer is required to present supporting documentation for the calculation of the profitability indicator, and has the option (but not the obligation) to present, for this purpose, a report from an independent auditor certifying the calculation of the indicator.
- **Other aspects:**
    - taxpayers are required to include an affidavit confirming the completeness and accuracy of the information contained in the transfer pricing file;
    - in case of non-submission or incomplete documentation, NAFA may proceed to adjust/estimate transfer prices in relation to the central market trend (median of the interquartile range or arithmetic average of at least three comparables).

The provisions of art. 2 para. (1) of Order 828/2026 (on the thresholds applicable to large taxpayers) apply to transactions carried out starting with 2026, while the procedural rules of the Order apply to administration procedures initiated after January 1, 2027.

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