

## Germany

### TRANSFER PRICING COUNTRY PROFILE

#### 1. Reference to the Arm's Length Principle

Section 1 paragraph 1 of the External Tax Relations Act (Außensteuergesetz) contains the arm's length principle and is the German corresponding provision to Art. 9 OECD MTC for transfer pricing adjustments in cross-border business relations with a related person.

Furthermore Section 8 paragraph 3 of the Corporation Tax Act (Körperschaftsteuergesetz) provides that hidden profit distributions do not reduce the taxable profit and that hidden contributions do not increase the taxable profit of a corporation.

In addition the EU Arbitration Convention (90/436/EEC), which is statutory law in Germany as in each member state of the EU, contains the arm's length principle in Article 4. The definition is in line with Article 9 of the OECD MTC.

A reference to the arm's length principle is further included in several circulars of the Federal Ministry of Finance (BMF), e.g.:

- Principles for auditing the profit allocation between related persons with crossborder transactions as regards the duties of determination and cooperation, adjustments of income and mutual agreement and arbitration procedures (Administration Principles - Procedures) of 12 April 2005 (Federal Tax Gazette I p. 570)
- Information on international mutual agreement and arbitration procedures in the field of taxes on income and capital of 13 July 2006 (Federal Tax Gazette I p. 461)

#### 2. Reference to the OECD Transfer Pricing Guidelines

No reference made in statutory law, but in Federal Ministry of Finance (BMF) circulars, as recently in Principles for the Examination of Income Allocation through Cost Sharing Arrangements between Internationally Associated Enterprises of 5 July 2018 (Federal Tax Gazette I p. 743)

#### 3. Definition of related parties

Section 1 paragraph 2 of the External Tax Relations Act (Außensteuergesetz) contains the German definition of related parties.

A person is affiliated with the taxpayer, if:

the person has a direct or indirect share in the taxpayer amounting to at least one quarter (substantial participation) or may directly or indirectly exercise over the taxpayer a controlling influence or vice versa the taxpayer holds a substantial participation in the person or may exercise a direct or indirect controlling influence over this person; or

a third person has a substantial participation in both the person and the taxpayer or may exercise on both a direct or indirect controlling influence; or

the person or the taxpayer is able to exercise an influence extraneous to the business relationship over the taxpayer or the person when concluding the terms and conditions of a business relationship or if one of them has an own interest regarding the income generation of the other person.

#### 4. Transfer pricing methods

Section 1 paragraph 3 of the External Tax Relations Act (Außensteuergesetz) provides for the statutory priority of the traditional transaction methods (comparable uncontrolled price method, resale price method, cost plus method) for determining transfer prices. Transactional profit methods can also be

used under certain circumstances, i.e. if the traditional transaction methods cannot be applied reliably.

Furthermore, the Federal Ministry of Finance circular of 12 April 2005 (Federal Tax Gazette I p. 570) "Administration Principles - Procedures" contains additional regulations regarding transfer pricing methods. It refers directly to the OECD Transfer Pricing Guidelines 1995.

## 5. Transfer pricing documentation requirements

Germany follows the three-tiered standardised approach to transfer pricing documentation.

Section 90 paragraph 3 of the Fiscal Code (Abgabenordnung) contains specific transfer pricing documentation requirements; master file and local file. The statutory rule is supplemented by a decree law "regulation on documentation of profit allocation" (Gewinnabgrenzungsaufzeichnungs-Verordnung) and a Federal Ministry of Finance (BMF) circular "Administration Principles - Procedures" of 12 April 2005 (Federal Tax Gazette I p. 570).

Germany has legislation in place (§ 138a of the Fiscal Code) that imposes and enforces CbC requirements on MNE Groups whose Ultimate Parent Entity is resident for tax purposes in the Germany. The filing obligation for a CbC report in Germany commences in respect of fiscal years commencing on or after 1 January 2016. Germany has published also an administrative order which refers to the definitions contained in the Action 13 Report's CbC report

## 6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

Section 162 paragraph 4 of the Fiscal Code (Abgabenordnung) contains specific surcharge in cases of non-fulfilment of the transfer pricing documentation requirements.

In cases of non-compliance with CbC reporting, Section 379 paragraph 2 and 5 of the German Fiscal Code include provisions to impose a penalty of up to EUR 10 000, as well as measures to enforce compliance.

## 7. Information for Small and Medium Enterprises on TP

## 8. Information on dispute resolution

Germany Dispute Resolution Profile:

<http://www.oecd.org/tax/dispute/Germany-Dispute-Resolution-Profile.pdf>

### Competent Authority

For all MAPs concerning specific taxpayers and for all APAs:

Bundeszentralamt für Steuern / Federal Central Tax Office  
An der Kuppe 1, 53225 Bonn, Germany

Tel.: +49-228-406 -0 Fax.: +49-228-406 - 3118

E-Mail: [yv sv@bzst.bund.de](mailto:yv sv@bzst.bund.de)

Homepage :

[https://www.bzst.de/DE/Steuern\\_International/Verstaendigungsverfahren/verstaendigungsverfahren\\_node.html](https://www.bzst.de/DE/Steuern_International/Verstaendigungsverfahren/verstaendigungsverfahren_node.html)

With respect to mutual agreements of a general nature which concern or may concern a category of taxpayers, the Federal Ministry of Finance in Berlin is the Competent Authority. The Federal Central Tax Office (see above) can provide

information on who to contact.

## 9. Relevant regulations on Advance Pricing Arrangements

The Federal Ministry of Finance (BMF) circular "Information on bi- or multilateral procedure under Double Taxation Conventions for reaching Advance Pricing Agreements ("APA") aimed at granting binding advance approvals for transfer prices agreed between international associated enterprises" of 5 October 2006 (Federal Tax Gazette I p. 594), explains the APA procedure in detail.

## 10. Links to relevant government websites

Federal Ministry of Finance (BMF): <http://www.bundesfinanzministerium.de>

Federal Central Tax Office (BZST): <http://www.bzst.de>

## 11. Other relevant information

Transfer Pricing Country Profile:

<http://www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-germany.pdf>

Information regarding transfer pricing in Germany (English):

<https://www.bundesfinanzministerium.de/Web/EN/Issues/Taxation/External-Tax-Relations/External-Tax-Relations.html>