

AUSTRIA

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

Section 6 Paragraph 6 of the Austrian Income Tax Act contains the arm's length principle dealing with transfers of assets (tangible or intangible) or services into and out of the country. There upon it is provided that assets transferred to a foreign PE or business of the same taxpayer, as well as to a group of companies, must be valued at the price that would be realized if the assets were sold to unrelated parties.

Furthermore, Section 8 paragraph 2 of the Austrian Corporate Tax Act provides that hidden profit distributions do not reduce the taxable profit of the corporation and Section 8 paragraph 1 of the Austrian Corporate Tax Act correspondingly provides that hidden contributions by a shareholder do not increase the taxable income of the corporation.

Sections 21 et seq. of the Federal Procedural Tax Act provide for as a general rule the principle of substance over form which entitles the tax administration to look through artificial arrangements of civil law and to apply taxation measures on the basis of the factual economically intended fact pattern rather than the civil law construction chosen.

2. Reference to the OECD Transfer Pricing Guidelines

The OECD Transfer Pricing Guidelines 1995 have been published as official regulations in the official Gazette of the Austrian Tax Authority. They are currently serving as the main basis for the interpretation of the arm's length principle of Art 9 OECD-Model Convention.

A reference to the OECD Transfer Pricing Guidelines can also be found in the Austrian Transfer Pricing Guidelines 2010, at paragraph 1 et seq.

3. Definition of related parties

There is no specific definition of related parties in the Austrian Income Tax Act. General reference is made to Art 9 OECD-Model Convention.

4. Transfer pricing methods

With regard to the proper method of establishing transfer prices, Austria relies on the general recommendations of the OECD Transfer Pricing Guidelines. Further information – in line with the OECD Transfer Pricing Guidelines – can be found in the Austrian Transfer Pricing Guidelines 2010, para 20 et seq.

5. Transfer pricing documentation requirements

The general statutes in the Austrian Federal Fiscal Code are also applicable for Transfer Pricing Documentation and are interpreted by means of chapter 5 of the OECD-Transfer Pricing Guidelines.

No specific national transfer pricing documentation rules/guidance. All tax payers are obliged to keep sufficient records of their transactions according to section 126 of the Austrian Fiscal Code. The Austrian courts and authorities interpret section 115 to create an increased obligation to cooperate with the authority in cross-border cases; i.e. the tax payer has to save means and obtain all means of evidence (including transfer pricing documentation in terms of the OECD standard).

Implementation of the Code of Conduct on Transfer Pricing documentation for associated enterprises in the European Union (EU TPD) - summary of Member States' responses to the 2013 JTPF questionnaire on the implementation of the EU TPD:

http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2013/summary-ms.pdf

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

In accordance with section 118 of the Austrian Fiscal Code, tax payers can request an advance ruling procedure related to transfer pricing. The costs for such a request vary between 1.500 Euro and 20.000 Euro, depending on the applicants turn-over.

7. Information for Small and Medium Enterprises on TP

Information relevant for SMEs in tackling transfer pricing matters is available on the JTPF webpage at: http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/profile-at.pdf

8. Information on dispute resolution

Competent Authority	<p>Bundesministerium für Finanzen (Federal Ministry of Finance)</p> <p>International Tax Law Division (Division VI/8) Postal Address: Bundesministerium für Finanzen Abteilung VI/8 Johannesgasse 5 A-1010 Wien Tel: (43) (1) 514 33 Head of Division: Ministerialrat Dr. Heinz JIROUSEK Telephone extension no.: 504 100 Internet (E-mail) address: post.vi-8@bmf.gv.at</p> <p>Responsible for tax treaty negotiations, TIEAs, mutual agreement procedures (including EU Arbitration Convention), general matters of mutual assistance (including negotiations of mutual assistance treaties and arrangements and interpretation of such treaties).</p>
Organization	<p>MAP and APAs - the division for international tax affairs in the Ministry of Finance</p>
Scope of MAP & MAP APA	<p>- Relief of double taxation - Treaty interpretation</p>
Domestic guidelines & administrative arrangements	<p>No particular administrative instructions.</p>
Time for filing	<p>N/A</p>
Form of request	<p>No specific form</p>
Documentation requirement	<p>MAP - Allegations of the taxpayer have to be substantiated by him. The taxpayer has to provide appropriate documentation without being obliged to comply with particular formal requirements. MAP APA - The same documentation requirements would apply.</p>

User fees	None
Tax collection / penalty / interest	MAPs are conducted without any regard to whether or not they may lead to a decrease of the financial burden of the taxpayer (normally all taxpayer-requests for MAPs are intended to lessen the taxpayer's tax burden in the one or other state).
Other dispute resolution mechanisms	The EU Arbitration convention for the transfer pricing cases.
Government Website	www.bmf.gv.at

Dispute resolution under the Arbitration Convention does not need to be initiated and may be suspended if one of the enterprises involved is subject to a 'serious penalty' for the transactions giving rise to the profit adjustment (Article 8).

Unilateral Declaration of Austria on Article 8 of the Arbitration Convention (*Official Journal C 026, 31/01/1996 P. 0001 – 0033*)

"An infringement punishable by a 'serious penalty' is constituted by any intentional or negligent evasion of tax or duty that is penalized under the law on tax offences."

9. Relevant regulations on Advance Pricing Arrangements

Bilateral Advance Pricing Agreements are currently pursued on the basis of Art 25 of the OECD-Model Tax Convention.

10. Links to relevant government websites

www.bmf.gv.at

11. Other relevant information

Secondary and compensating year-end adjustments may result in double taxation. Two questionnaires launched by the EU Joint Transfer Pricing Forum (JTPF) in 2011 took stock of the situation prevailing in each EU Member State with respect to secondary and compensating year-end adjustments as on 1 July 2011.

[Secondary Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)

[Compensating/year-end Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)