

Transfer Pricing Country Profile
(to be posted on the OECD Internet site www.oecd.org/ctp/tp/countryprofiles)

Name of Country: Germany Date of profile: Nov 2012

1. Reference to the Arm's Length Principle

Section 1 paragraph 1 of the Foreign Tax 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 cross-border 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 (if any)

No reference made in statutory law, but in Federal Ministry of Finance (BMF) circulars, as in Administration Principles – Procedures of 12 April 2005 (Federal Tax Gazette I p. 570)

3. Definition of related parties

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

4. Transfer pricing methods

Section 1 paragraph 3 of the Foreign Tax 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 can not 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

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

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.

7. Relevant regulations on Advance Pricing Arrangements

No specific statutory rule for Advance Pricing Agreements (APA). APA’s are as a rule bilateral and based on Double Tax Treaties, usually containing a clause on mutual agreement procedure and joint consultation in accordance with the Art. 25 OECD MTC.

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.

8. Link to relevant Government Internet sites

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

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

9. Other relevant information

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Note

1. Relevant provisions of domestic legislation referring to the Arm's Length Principle.
2. Reference if any to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations in domestic legislation or regulations.
3. Relevant legislation or regulations containing a definition of related parties or associated enterprises.
4. Relevant legislation or regulations containing guidance on transfer pricing methods including hierarchy among them if any.
5. Relevant regulations if any in relation to transfer pricing documentation requirements.
6. Relevant regulations if any on specific transfer pricing audit procedures and / or specific transfer pricing penalties.
7. Relevant regulations if any on Advance Pricing Arrangements.
8. Addresses of the Internet sites of the relevant authorities in charge of transfer pricing policy, its administration and Advance Pricing Arrangements.
9. Other relevant information, for instance having gone through a peer review, or having new transfer pricing regulations in preparation.