Austria

Transfer Pricing Country Profile

December 2021

		SUMMARY	REFERENCE
The Arm's Length Principle			
1	**Does your domestic legislation or regulation make reference to the Arm's Length Principle?**	☒ **Yes** ☐ **No** The Austrian Income Tax Act (Section 6 paragraph 6 of the ITA) contains the arm's length principle dealing with transfers of assets (tangible or intangible) or services into and out of the country. Thereupon it is provided that assets transferred to a foreign PE or business of the same taxpayer, as well as to other group 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 CITA provides that hidden profit distributions do not reduce the taxable profit of the corporation and Section 8 paragraph 1 of the CITA correspondingly provides that hidden contributions by a shareholder do not increase the taxable income of the corporation. As a general rule, Sections 21 et seq. of the FFC provide for 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.	Section 6 paragraph 6 of the Austrian Income Tax Act ("ITA") Section 8 paragraph 1 and 2 of the Austrian Corporate Income Tax Act ("CITA") Sections 21, 22 and 23 et seq. of the Federal Fiscal Code ("FFC")
2	**What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?**	The OECD Transfer Pricing Guidelines ("OECD TPG"), as they may be revised from time to time, serve as the main basis for the interpretation of the arm's length principle of Article 9 of the OECD Model Convention. They serve as a tool for interpretation of Austrian tax treaties (see Article 31 paragraph 3 sub-paragraph b of the Vienna Convention on the Law of Treaties). The role of the OECD Transfer Pricing Guidelines is explicitly mentioned and explained in the Austrian Transfer Pricing Guidelines 2021 ("Austrian TPG 2021";	Section 6 paragraph 6 of the Austrian Income Tax Act Paragraph 19 of the Austrian TPG 2021

<table>
<tr><td></td><td></td><td>the official regulation of the Austrian tax administration regarding the application of the ALP under Austrian tax treaties).</td><td></td></tr>
<tr><td>3</td><td>Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.</td><td>☒ Yes
☐ No

In general, for the interpretation of “related parties” reference is made to Article 9 of the OECD Model Convention. Furthermore, Section 6 paragraph 6 of the ITA (see under question 1) contains the following criteria:
- common ownership of the enterprises;
- in case of partnerships, the taxpayer is a partner of both enterprises;
- in case of companies, substantial shareholding (i.e. more than 25%); or
- the same persons manage, have control or influence both enterprises.</td><td>Article 9 OECD Model Convention
Section 6 paragraph 6 of the ITA</td></tr>
<tr><td colspan="4">Transfer Pricing Methods</td></tr>
<tr><td>4</td><td>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</td><td>☒ Yes
☐ No

If affirmative, please check those provided for in your legislation:
<table><tr><td>CUP</td><td>Resale Price</td><td>Cost Plus</td><td>TNMM</td><td>Profit Split</td><td>Other (If so, please describe)</td></tr><tr><td>☒</td><td>☒</td><td>☒</td><td>☒</td><td>☒</td><td>☒</td></tr></table>
Austria applies the OECD TPG, which means that in general other methods are allowed. However, in practice they are not often used.</td><td>Article 9 OECD Model Convention
Section 6 paragraph 6 of the ITA</td></tr>
<tr><td>5</td><td>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</td><td>Please check all that apply:
☒ Hierarchy of methods
☒ Most appropriate method
☐ Other (if so, please explain)

The selection of a transfer pricing method always aims at finding the most appropriate method for a particular case. With regard to the proper method of establishing transfer prices, Austria relies on the general recommendations of the OECD TPG (see paragraphs 50 et seq. of the Austrian TPG 2021). Where a traditional transaction based method (CUP, Resale Price and Cost Plus) and a</td><td>Paragraphs 50 et seq. of the Austrian TPG 2021</td></tr>
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		transactional profit method can be applied in an equally reliable manner, the traditional transaction method is preferable to the transactional profit method.	
6	**If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.**	☒ For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed. ☐ Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (*if so, please explain*) ☐ Other (*if so, please explain*)	
Comparability Analysis			
7	**Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?**	☒ **Yes** ☐ **No** The respective guidance under the Austrian TPG 2021 (at paragraph 57 et seq.) follows the guidance as set out under Chapter I, D.1 and Chapter III of the OECD TPG.	Paragraphs 57 et seq. of the Austrian TPG 2021
8	**Is there a preference in your jurisdiction for domestic comparables over foreign comparables?**	☐ **Yes** ☒ **No** According to paragraph 57 of the Austrian TPG 2021, the choice of comparables rather depends on the approach that provides for the most reliable data.	Paragraphs 57 et seq. of the Austrian TPG 2021
9	**Does your tax administration use secret comparables for transfer pricing assessment purposes?**	☐ **Yes** ☒ **No**	
10	**Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?**	☒ **Yes** ☐ **No** If the appropriate use of a transfer pricing method leads to an arm's length range, any price within this range will be allowed. In line with international practice, statistical measures are accepted in Austria if the reliability of the comparability analysis is increased by statistical tools narrowing the range (e.g. by using interquartile ranges).	Paragraph 76 et seq. of the Austrian TPG 2021

		If the price of a controlled transaction falls outside the arm's length range, the adjustment by the tax administration to a point within the range can be based on measures of central tendency (e.g. the median).	
11	**Are comparability adjustments required under your domestic legislation or regulations?**	☒ **Yes** ☐ **No** If an (alleged) comparable does not meet all comparability factors, comparability adjustments should be considered if they increase the reliability of the results.	Paragraph 71 of the Austrian TPG 2021
Intangible Property			
12	**Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?**	☒ **Yes** ☐ **No** The Austrian TPG 2021 (at paragraphs 137 et seq.) provide guidance in respect of intangibles based on Chapter VI of the OECD TPG.	Chapter 1.3.4. of the Austrian TPG 2021 (paragraphs 137 et seq.)
13	**Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard-to-value intangibles (HTVI)?**	☒ **Yes** ☐ **No** In general, Austria applies the OECD TPG in their latest version. Accordingly, the new wording on HTVI in Chapter VI finds its way into administrative practice. Therefore, it is not necessary to implement the HTVI approach into Austrian domestic law. Nevertheless, the Austrian TPG 2021 explicitly refer to the OECD guidance on HTVI and give further guidance on its application in Austria. For further details, see the separate questionnaire on the implementation of the HTVI approach.	Paragraphs 154 et seq. of the Austrian TPG 2021 HTVI Implementation Questionnaire
14	**Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?**	☒ **Yes** ☐ **No** According to the Corporate Income Tax Act, royalty payments are non-deductible under certain circumstances (i.e. in intra-group situations, where there is no or low taxation at the level of the receiving company). According to Section 197 paragraph 2 of the Austrian Entrepreneurial Law, the costs for intangible assets, which are not acquired for a valuable consideration, must not be capitalised.	Section 12 paragraph 1 (10) of the CITA Section 197 paragraph 2 of the Austrian Entrepreneurial Law Section 99a of the ITA

		Section 99a of the ITA contains the implementation of the European Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. Royalties which are in scope of this rule are exempt from withholding tax at source.	
Intra-group Services			
15	**Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?**	☒ **Yes** ☐ **No** Among other guidance on intra-group services, domestic legislation explicitly provides guidance on direct charge methods. Accordingly, the Austrian TPG provide that a direct-charge method facilitates the determination of whether the charge is consistent with the arm's length principle, especially where specific services that form a main business activity are provided not only to associated enterprises but also to independent parties. However, in some cases an indirect-charge method may be necessary, e.g. where a separate recording and analysis of the relevant services for each beneficiary would involve a burden of work that would be disproportionately heavy in relation to the activities themselves. Each case is dependent upon its own facts and circumstances and the arrangements within the group.	Chapter 1.3.2. of the Austrian TPG 2021 (paragraphs 86 et seq.)
16	**Do you have any simplified approach for low value-adding intra-group services?**	☒ **Yes** ☐ **No** As a general guidance, a net profit margin between 3-10% can serve as an orientation in respect of services of routine character (based on the report by the EU Joint Transfer Pricing Forum). In addition, Austria has adopted the low value-adding intra-group services approach in the Austrian Transfer Pricing Guidelines 2021 without any thresholds (OECD TPG para. 7.63).	Paragraph 90 of the Austrian TPG 2021 Paragraphs 94 et seq. of the Austrian TPG 2021
17	**Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?**	☐ **Yes** ☒ **No**	

Financial Transactions			
18	**[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?**	☒ **Yes** ☐ **No** The Austrian TPG 2021 (at paragraphs 106 et seq.) provide guidance in respect of financial transactions based on Chapter X of the OECD TPG.	Chapter 1.3.3. of the Austrian TPG 2021 (paragraphs 106 et seq.)
19	**[NEW] Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?**	☒ **Yes** ☐ **No** According to the Corporate Income Tax Code, the following limitations on the deductibility of interest exist: • Intra-group interest payments to low tax jurisdictions are non-deductible. • If a loan (intra-group or from a third party) is used to acquire shares within the group or to finance a capital repayment, the interest payments are non-deductible. • In line with the EU Anti-Tax Avoidance Directive (ATAD), Austria has implemented an additional interest limitation rule which will cap the deduction of net interest expenses at 30% of the tax-relevant EBITDA. Besides these rules, no specific thin capitalisation rules exist. The qualification of a transaction as debt or equity is determined based on the arm's length principle.	Sections 12 and 12a of the CITA
Cost Contribution Agreements			
20	**Does your jurisdiction have legislation or regulations on cost contribution agreements?**	☒ **Yes** ☐ **No** The Austrian TPG 2021 provide guidance in respect of CCAs based on Chapter VIII of the OECD TPG 2017.	Chapter 1.3.5. of the Austrian TPG 2021 (paragraphs 159 et seq.)

Transfer Pricing Documentation			
21	**Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?**	☒ **Yes** ☐ **No** *If affirmative, please check all that apply:* ☒ Master file consistent with Annex I to Chapter V of the TPG ☒ Local file consistent with Annex II to Chapter V of the TPG ☒ Country-by-country report consistent with Annex III to Chapter V of the TPG ☐ Specific transfer pricing returns (separate or annexed to the tax return) ☒ Other (specify): If the thresholds of the Austrian TPDA are not fulfilled (see next question), the general documentation rules under the FFC apply. This means that the taxpayer does not need to follow the three-tiered approach to TP documentation as set forth in Chapter V of the OECD TPG (but can do so voluntarily). In any case, depending on the volume and complexity of the cross-border intra-group transactions, the TP documentation needs to include a minimum of information on the related parties/the MNE group, the relevant transactions, the value chain within the group, the FAR analysis, the choice of the TP method, the comparability analysis and (written) contracts.	Section 3 of Austrian Transfer Pricing Documentation Act ("TPDA") Paragraph 402 of the Austrian TPG 2021
22	**Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)**	Master File/Local Filing: - Threshold: if the revenues of a Constituent Entity of an MNE Group exceeded the amount of EUR 50 million during the two preceding fiscal years. Moreover, any Constituent Entity of an MNE Group resident in Austria shall be required to submit a Master File upon request of the Competent Tax Office if, under the rules of any other country or jurisdiction, preparation of a Master File by any Constituent Entity resident there is required. - Timing: submission to the Competent Tax Office upon its request within 30 days from the date of filing of the corporate tax return / the tax return, where income is assessed. - Language: documentation must be submitted in an official language permitted in tax proceedings or in English. Country-by-country Reporting:	Sections 3, 4, 8 and 11 of the TPDA Paragraphs 476 et seq. of the Austrian TPG 2021 Paragraphs 402 et seq. of the Austrian TPG 2021

		- Requirements are fully in line with the Action 13 minimum standard and the respective EU Directive. General documentation rules: - If the TPDA does not apply and TP documentation is prepared based on the general documentation rules, no TP specific filing obligations exist. This means that the TP documentation has to be prepared together with the tax return and has to be available when the tax return is filed at the latest (paragraph 407 of the Austrian TPG 2021). - The TP documentation generally has to be prepared in German. However, if it was written in English, a translation into German should only be required as appropriate (paragraph 414 of the Austrian TPG 2021).	
23	**Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?**	☒ **Yes** ☐ **No** Master File/Local Filing/general documentation rules: - The Master File and Local File (or other TP documentation) are part of a taxpayer's records that generally need to be kept for tax purposes (Section 124 of the FFC). The violation of this requirement to keep records can be prosecuted under Section 51 of the FinCC with a penalty of up to EUR 5 000. Country-by-country Reporting: - Section 49b of the FinCC provides for the following penalties in case of violation of the obligation to file the CbC Report (i.e.: late/no or incorrect filing): deliberate violation → fine up to EUR 50 000 grossly negligent violation → fine up to EUR 25 000	Section 124 of the Austrian Federal Fiscal Code ("FFC") Sections 49b and 51 of the Austrian Financial Criminal Code ("FinCC")
24	**If your legislation provides for exemption from transfer pricing documentation obligations, please explain.**	Master File/Local Filing: - The only exemption from transfer pricing documentation is the one for Constituent Entities of an MNE Group that do not reach the respective threshold (see under 20). Country-by-country Reporting: - Requirements are fully in line with the Action 13 minimum standard and the respective EU Directive → no further exemptions.	Section 3 paragraph 1 of the TPDA

Administrative Approaches to Avoiding and Resolving Disputes			
25	**Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?**	Please check those that apply: ☒ Rulings ☒ Enhanced engagement programs ☒ Advance Pricing Agreements (APA) ☒ Unilateral APAs ☒ Bilateral APAs ☒ Multilateral APAs ☒ Mutual Agreement Procedurescf ☒ Other (*please specify*): EU Tax Dispute Resolution Act (including MAP and binding arbitration) Austria has issued a guidance on dispute resolution instruments including for the purpose of transfer pricing. In this MAP Guidance further details can be found, in particular with regard to APA and MAP requirements.	Section 118 of the Austrian FFC Sections 153a et seq. of the Austrian FFC Austrian double tax conventions EU Arbitration Convention Austrian EU Tax Dispute Resolution Act Austria's MAP Profile Austria's MAP Guidance (2019) (see also the website of the Austrian Federal Ministry of Finance)
Safe Harbours and Other Simplification Measures			
26	**Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?**	☐ **Yes** ☒ **No**	
27	**Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.**	N/A	
Other Legislative Aspects or Administrative Procedures			
28	**Does your jurisdiction allow/require taxpayers to make year-end adjustments?**	☒ **Yes** ☐ **No**	Paragraph 73 of the Austrian TPG 2021

		In general, it is considered that due to the price setting approach ("ex ante") year-end adjustments would not be in line with the ALP. However, year-end adjustments are accepted, if such practice would also have been agreed between two independent parties. This would particularly be the case if the pricing factors are agreed in advance, there are uncertainties in the price setting and the taxpayer monitors during the fiscal year if the prices are at arm's length.	
29	**Does your jurisdiction make secondary adjustments?**	☒ **Yes** ☐ **No** In Austria, secondary adjustments usually take the form of a constructive loan or receivable. However, there are also situations where secondary adjustments take the form of a constructive dividend (or contribution) (e.g. if the parties to the transaction do not accept a loan or receivable). Outbound constructive dividends are generally subject to withholding tax (tax treaty exemption or reduction may be available).	Paragraphs 507 et seq. of the Austrian TPG 2021
Attribution of Profits to Permanent Establishments			
30	**[NEW] Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?**	☐ **Yes** ☒ **No** Austria follows the AOA to the extent that it is compatible with the wording of Article 7 OECD MTC prior to the changes in 2010 ("AOA light"). Austria has reserved its right to use the previous version of Article 7, i.e. the version that was included in the OECD MTC immediately before its 2010 update (see para. 96 of the Commentary on Article 7 OECD MTC). All Austrian tax treaties thus include rules for the allocation of business profits based on the "old" Article 7 OECD MTC. For the purpose of determining the profits of a permanent establishment ("PE") this means that a two-step analysis has to be carried out: 1) analysis of the (significant people) functions, assets and risks of a PE; 2) determination of the PE's profit by pricing dealings between the PE and the rest of the enterprise on an arm's length basis using the OECD TPG by analogy. However, Austria recognises dealings only to the extent that it is in line with the OECD MTC (and its Commentaries) in its 2008 version. Accordingly, internal interest, royalty and rental payments are generally not recognized.	Paragraphs 279 et seq. of the Austrian TPG 2021

31	**[NEW] Does your jurisdiction follow also another approach?**	☐ **Yes** ☒ **No**	
	Other Relevant Information		
32	**Other legislative aspects or administrative procedures regarding transfer pricing**	N/A	
33	**Other relevant information** (e.g. *whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire*)	N/A	

For more information, please visit: https://oe.cd/transfer-pricing-country-profiles