

Germany

Transfer Pricing Country Profile

Updated October 2017

	SUMMARY	REFERENCE
The Arm's Length Principle		
1	<p>Does your domestic legislation or regulation make reference to the Arm's Length Principle?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Foreign Tax Act, Section 1 Corporation Taxes Act, Section 8, para 3</p>
2	<p>What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?</p> <p>The TPG can be seen as interpretation aid if the specific topic is not governed by our domestic legislation or by administrative order. They also have practical relevance in MAPs and APAs.</p>	
3	<p>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.</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Section 1 paragraph 2 of the Foreign Tax Act contains the German definition of related parties.</p> <p>A person is affiliated with the taxpayer, if</p> <ol style="list-style-type: none"> 1. 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 2. 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 3. 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. 	<p>Section 1 paragraph 2 of the Foreign Tax Act</p>

Transfer Pricing Methods

4	<p>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" style="width: 100%; text-align: center; border-collapse: collapse;"> <thead> <tr> <th style="padding: 5px;">CUP</th> <th style="padding: 5px;">Resale Price</th> <th style="padding: 5px;">Cost Plus</th> <th style="padding: 5px;">TNMM</th> <th style="padding: 5px;">Profit Split</th> <th style="padding: 5px;">Other (If so, please describe)</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;"><input checked="" type="checkbox"/></td> <td style="padding: 5px;"><input type="checkbox"/></td> </tr> </tbody> </table> <p>The Foreign Tax Act 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.</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>Federal Ministry of Finance circular of 12 April 2005 (Federal Tax Gazette I p. 570)</p>				
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)										
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>										
5	<p>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</p>	<p>Please check all that apply:</p> <p><input type="checkbox"/> Hierarchy of methods</p> <p><input type="checkbox"/> Most appropriate method</p> <p><input checked="" type="checkbox"/> Other (if so, please explain)</p>	<p>See explanation regarding question 4.</p>												
6	<p>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</p>	<p><input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (if so, please explain)</p> <p><input type="checkbox"/> Other (if so, please explain)</p>	<p>Domestic legislation does not contain specific guidance on commodity transactions.</p>												

Comparability Analysis

7	Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
11	Are comparability adjustments required under your domestic legislation or regulations?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Intangible Property

12	Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		The ALP also applies for intangibles.	
13	Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (HTVI)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Germany is currently discussing the introduction of rules regarding HTVI.	
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Intra-group Services

15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		The ALP also applies for intra-group services transactions.	
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Germany is discussing the introduction of domestic rules for low value-adding group services.	
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Cost Contribution Agreements

18	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		The ALP also applies for CCAs.	

Transfer Pricing Documentation

19	Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If affirmative, please check all that apply:</i> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG <input checked="" type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG <input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG <input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input type="checkbox"/> Other (specify): 	
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20	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	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” (Gewinnabgrenzungsaufzeichnungs-Verordnung and a Federal Ministry of Finance (BMF) circular “Administration Principles – Procedures” of 12 April 2005 (Federal Tax Gazette I p. 570). Master and Local file generally have to be filed during a tax audit by request of the tax auditor.	Section 90 paragraph 3 of the Fiscal Code (Abgabenordnung)
21	Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Section 162 paragraph 4 of the Fiscal Code (Abgabenordnung) contains specific surcharge in cases of non-fulfilment of the transfer pricing documentation requirements.	Section 162 paragraph 4 of the Fiscal Code (Abgabenordnung)
22	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	N/A	
Administrative Approaches to Avoiding and Resolving Disputes			
23	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	Please check those that apply: <input type="checkbox"/> Rulings <input type="checkbox"/> Enhanced engagement programs <input checked="" type="checkbox"/> Advance Pricing Agreements (APA) <input type="checkbox"/> Unilateral APAs <input checked="" type="checkbox"/> Bilateral APAs <input checked="" type="checkbox"/> Multilateral APAs <input checked="" type="checkbox"/> Mutual Agreement Procedures <input checked="" type="checkbox"/> Other (<i>please specify</i>): Multilateral Controls (e.g. simultaneous audits) Double Tax Treaty is the sole legal reference for APA. There are, however, regulations acknowledging the existence of APAs (e.g. Sec. 178a of the General Tax Code).	

Safe Harbours and Other Simplification Measures

24	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
25	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	No simplification measures are available.	

Other Legislative Aspects or Administrative Procedures

26	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
27	Does your jurisdiction make secondary adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

Other Relevant Information

28	Other legislative aspects or administrative procedures regarding transfer pricing		
29	Other relevant information (e.g. <i>whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire</i>)	Germany is in the process of discussing domestic rules for low value-adding group services and HTVI.	