

## GERMANY

### SMALL AND MEDIUM ENTERPRISES AND TRANSFER PRICING

**1. Have you established a dedicated website/webpage as a single point of information for SMEs on transfer pricing matters? Alternatively, has information for SMEs on transfer pricing matters been made available electronically via an existing website/webpage? In which language(s) is the information available?**

Currently there is no specific official publication on SMEs and transfer pricing.

The Federal Ministry of Finance issued a number of circulars concerning transfer pricing which are available to the general public, including of course SMEs. The information is available in German language:

([http://www.bundesfinanzministerium.de/Web/DE/Themen/Steuern/Internationales\\_Steuerrecht/Allgemeine\\_Informationen/allgemeine\\_informationen.html](http://www.bundesfinanzministerium.de/Web/DE/Themen/Steuern/Internationales_Steuerrecht/Allgemeine_Informationen/allgemeine_informationen.html)).

**2. Do you have a single definition of SME that applies for most direct tax purposes?**

There is no general SME definition for tax purposes. Different SME definitions apply for specific tax purposes, e.g. turnover thresholds for certain VAT simplification purposes, or profit and turnover thresholds that influence tax audit frequency.

**3. Do you apply a specific SME definition for transfer pricing purposes?**

There is a specific SME definition for transfer pricing documentation purposes (literally translated, the definition refers to "smaller enterprises"). For these purposes, only the amount of cross-border transactions with related parties is considered. If cross-border supplies of goods to or from related parties amount to less than 5 million EUR, and cross-border services to or from related parties amount to less than 500 000 EUR per year, then the German enterprise qualifies as a "smaller enterprise". If there is more than one German company in a group, then the combined cross-border related party supplies and services of all German companies in the group need to remain below the thresholds. The same thresholds apply in the context of advance pricing agreement procedures (with the consequence of reduced fees and also reduced documentation requirements), however, in the APA context only cross-border related party transactions covered by the APA application (instead of all cross-border related party transactions) have to be below the thresholds.

**4. What specific services for SMEs are in place e.g. advanced pricing agreements, dispute resolution (pre- or post-audit), etc.? Is information on these services available electronically on the website(s) identified in question 1 or elsewhere? In which language(s) is the information available?**

The constitutional principle of proportionality influences all tax administration activities. For instance, the size of an enterprise (turnover and profits) will affect frequency and intensity of tax audits, including transfer pricing audits. In particular, the frequency of tax audits is determined using size thresholds established and published by the tax administration for this purpose, however, there are no specific size thresholds for transfer pricing audits, just size thresholds for tax audits in general. The general principle of proportionality also generally affects the kind of information and documentation asked for in tax audits, including transfer pricing audits. Additionally, in the areas of transfer pricing documentation and APA procedures, the following specific provisions provide alleviations for SMEs:

Documentation: Under section 6 of the ordinance on transfer pricing documentation ("Gewinnabgrenzungsaufzeichnungsverordnung"), "small enterprises" are exempted from the

obligation to specifically prepare documentation in writing for tax purposes. Instead, for them it is sufficient to provide the relevant information orally and only submit all relevant (written) documents they actually possess.

The "Gewinnabgrenzungsaufzeichnungsverordnung" is published in German language at: <http://www.gesetze-im-internet.de/gaufzv/BJNR229600003.html>.

**APAs:** Under section 178a paragraph 3 of the Fiscal Code (Abgabenordnung), the fees for APA procedures concerning transactions that stay within certain thresholds are reduced to 50% of the fee that generally applies. For instance, the standard fee of 20 000 EUR is reduced to 10 000 EUR. The transactions size thresholds are the same as used in the "small enterprises" definition, but in the APA context it is sufficient that cross-border related party transactions covered by the APA application (instead of all cross-border related party transactions) remain under the thresholds.

The Fiscal Code is published in English at: [http://www.gesetze-im-internet.de/englisch\\_ao/](http://www.gesetze-im-internet.de/englisch_ao/).

**5. Are training materials made available to SMEs electronically via the website(s) identified in question 1 or elsewhere? In which language(s) is the information available?**

There are no specific manuals for SMEs. However, the Federal Ministry of Finance issued a number of circulars concerning transfer pricing which are available to the general public, including of course SMEs. The information is available in German language:

([http://www.bundesfinanzministerium.de/Web/DE/Themen/Steuern/Internationales\\_Steuerrecht/Allgemeine\\_Informationen/allgemeine\\_informationen.html](http://www.bundesfinanzministerium.de/Web/DE/Themen/Steuern/Internationales_Steuerrecht/Allgemeine_Informationen/allgemeine_informationen.html)).

**6. Is information on procedures to provide SMEs with advance certainty on transfer pricing issues (e.g. advanced pricing agreements, rulings and clearances) available electronically via the website(s) identified in question 1 or it is only available from some other source? In which language(s) is the information available?**

Information on the APA procedure is available on the Federal Central Tax Office's website ([www.bzst.de](http://www.bzst.de)), currently at:

[http://www.bzst.de/DE/Steuern\\_International/Advance\\_Pricing\\_Agreements/advance\\_pricing\\_agreements\\_node.html](http://www.bzst.de/DE/Steuern_International/Advance_Pricing_Agreements/advance_pricing_agreements_node.html) (in German), or

[http://www.bzst.de/EN/Steuern\\_International/Advance\\_Pricing\\_Agreements/advance\\_pricing\\_agreements\\_node.html](http://www.bzst.de/EN/Steuern_International/Advance_Pricing_Agreements/advance_pricing_agreements_node.html) (in English).

The preferred approach is a bilateral APA. Unilateral rulings on transfer pricing are only available under exceptional circumstances further specified in the 2006 circular that is available on the website.

**7. Is there a dedicated contact point available to SMEs for transfer pricing compliance issues?**

There is no specifically dedicated contact point for TP compliance issues for SMEs. The local tax office where the German enterprise is registered would have to be contacted.

**8. Is there a dedicated contact point for advanced pricing agreements, clearances and rulings available to SMEs?**

Bundeszentralamt für Steuern / Federal Central Tax Office  
Referat St III 1 / Division St III 1  
An der Kuppe 2  
53225 Bonn  
Germany  
Tel.: +49-228-406 -0  
E-mail: [vv\\_sv@bzst.bund.de](mailto:vv_sv@bzst.bund.de)

**9. Is there a dedicated contact point available to SMEs who want to claim relief from double taxation as a result of a transfer pricing adjustment?**

Bundeszentralamt für Steuern / Federal Central Tax Office  
Referat St III 1 / Division St III 1  
An der Kuppe 2  
53225 Bonn  
Germany  
Tel.: +49-228-406 -0  
E-mail: [vv\\_sv@bzst.bund.de](mailto:vv_sv@bzst.bund.de)

Taxpayers may contact their local tax office to see if in a case of primary adjustment made by a foreign tax administration at a foreign associated enterprise a corresponding adjustment may be possible without applying for a mutual agreement procedure.