

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. The OECD TPG, as they may be revised from time to time, 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. According to para 2 of the Austrian Transfer Pricing Guidelines 2010, the arm's length principle of Austrian Double Taxation Conventions has to be interpreted in the light of the principles of the OECD and under consideration of the OECD TPG, as they may be revised from time to time.

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. Furthermore, Section 6 paragraph 6 of the Austrian Income Tax Act (see under question 1) contains a 25% threshold in respect of related parties.

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. Where a traditional transaction based method (CUP, Resale Price and Cost Plus) and a transactional profit method can be applied in an equally reliable manner, the traditional transaction method is preferable to the transactional profit method.

5. Transfer pricing documentation requirements

In 2016 the Austrian Transfer Pricing Documentation Act was implemented which contains documentation requirements as defined in Action 13 of the OECD's Action Plan on BEPS. The legislation follows the three-tiered approach to transfer pricing documentation requiring

multinational enterprises to prepare a Master File (Paragraph 6), a Local File (Paragraph 7) and a Country-by-Country Report (Paragraph 4).

In addition, the general statutes in the Austrian Federal Fiscal Code are applicable for transfer pricing documentation and are interpreted by means of chapter 5 of the OECD-Transfer Pricing Guidelines for all taxpayers. According to Section 126 of the Austrian Federal Fiscal Code all taxpayers are obliged to keep sufficient records to adequately document the transactions. With regard to cross-border transactions Section 115 of the Austrian Federal Fiscal Code in addition establishes an increased obligation for cooperation with the Austrian tax authority.

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

In accordance with Section 118 of the Austrian Federal Fiscal Code, taxpayers can apply for an advance ruling procedure in the area of transfer pricing. The costs vary between 1.500 Euro and 20.000 Euro depending on the applicant's turnover.

The Austrian Transfer Pricing Documentation Act includes special penalties in conjunction with the obligation of transmitting the CbCR (up to 50.000 Euro).

7. Information for Small and Medium Enterprises on TP

There is no specific information for small and medium enterprises on TP.

The general rules are applicable for all companies.

8. Information on dispute resolution

Competent Authority	<p>Bundesministerium für Finanzen (Federal Ministry of Finance)</p> <p>International Tax Law Division (Division IV/8) Postal Address: Bundesministerium für Finanzen Abteilung IV/8 Johannessgasse 5 A-1010 Wien Tel: (43) (1) 514 33</p> <p>Head of Division: Dr. Sabine SCHMIDJELL-DOMMES Telephone extension no.: 506 206 Internet (E-mail) address: post.iv-8@bmf.gv.at</p> <p>Responsible for tax treaty negotiations, TIEAs, mutual agreement procedures, 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 law in the Ministry of Finance</p>
Scope of MAP & MAP APA	<p>- Relief of double taxation - Treaty interpretation</p>
Domestic guidelines & administrative arrangements	<p>Guidance on MAP and arbitration cases www.bmf.gv.at/steuern/int-steuerrecht Austrian Transfer Pricing Guidelines</p>

<https://findok.bmf.gv.at/findok>

Time for filing	MAP/APA – no specific local provisions
Form of request	No specific form
Documentation requirement	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.
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 the other state).
Other dispute resolution mechanisms	The EU Arbitration convention for the transfer pricing cases and for cases as of 1.7.2019 the Council Directive (EU) 2017/1852 of 10 December 2017 on tax dispute resolution mechanisms in den European Union via its implementation into local Austrian law are applicable.
Government Website	www.bmf.gv.at

Dispute resolution under the EU 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 EU 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 Arrangements are currently pursued on the basis of Art 25 of the OECD-Model Tax Convention.

For unilateral Advance Pricing Arrangements see Section 6.

10. Links to relevant government websites

www.bmf.gv.at

11. Other relevant information

The Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation was fully implemented into Austrian law (EU-Amtshilfegesetz) and allows active/passive presence of foreign officials.