

Transfer Pricing Country Summary

Austria

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1. Introduction

Austria is a member of the OECD and applies all BEPS provisions elements in its TP documentation requirements. The Austrian parliament passed the transfer Pricing Documentation Act (TPDA) on 6 July 2016. It is based on BEPS Action 13 of the OECD and increases the documentation burden significantly for multinationals having entities in Austria. This new law is effective for the fiscal year commencing on or after 1 January 2016.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Before 2010, Austria did not have any specific legislation regarding transfer pricing. A German translation of the OECD Transfer Pricing guidelines had been published as a decree of the Federal Ministry of Finance in the Fiscal register of the Austrian fiscal authority (AÖF Nr. 114/1996, 122/1997, 155/1998 and 171/2000). As an administrative decree, the Austrian Ministry of Finance published transfer pricing guidelines BMF-GZ 010221/2522-IV/4/2010 On 28 October 2010. These are the first guidelines regarding transfer pricing issues in Austria and mainly refer to the revised revised revised guidelines OECD Transfer Pricing Guidelines in 2010. The guidelines are binding on domestic tax authorities but not on taxpayers and the courts. In 2014, the OECD initiated the BEPS Project, which received significant consensus from Austrian authorities.

b) Definition of Related Party

Parties shall be deemed "associated" if one company directly or indirectly takes part in management, control or capital of the other, or if both companies are under common control. Specifically, the ownership of 25% or more of the other party will be subject to transfer pricing rules. Article 9 of the OECD Model Convention interprets the concept of "associated parties" in general. In addition to that, the ITA's Section 6(6) incorporates the following criteria:

- joint ownership of the enterprises;
- the taxpayer is a partner in both enterprises in the event of partnerships;
- considerable shareholding (more than 25%) in the case of companies; or
- the same people run, control, or influence both businesses.

c) Nature of Transfer Pricing Documentation

In Austria, no TP-specific returns must be filed together with the annual tax returns. Also, specific continuous disclosure is not needed in the returns. In the event of a tax audit, the auditors will often request a summary of related-party transactions and disclosure of all related-party contracts and TP documents. A comprehensive TP questionnaire is discussed in an increasing number of cases.

Moreover, Section 238 of the Austrian Commercial Code, which applies to medium and large entities, requires information disclosure of a company's transactions with related companies and persons and information on the value and nature of the relationship. It is also required to provide further information on the transactions enabling to analyse company's financial status. It should be highlighted that this reporting requirement only applies to substantial transactions and does not conform with the arm's length principle.

d) Tax Havens & Blacklists

Austria accepted CFC rules and ATAD. According to Austrian tax law, a foreign subsidiary or PE is regarded as low-taxed when an ETR of 12.5% or less.

e) Advance Pricing Agreement (APA)

Since 2011 Austria has offered unilateral tax rulings on transfer pricing issues based on Section 118 of the Austrian Federal Fiscal Code. The ruling is issued for 3 to 5 years and is binding for tax authorities if the facts are implemented as stated in the ruling request. The fees for filing tax rulings depend on revenues and group membership of the relevant taxpayer and range from EUR 1,500 to EUR 20,000.

In addition to this, it is possible to request a unilateral express answer (EAS) from the Ministry of Finance. However, in EAS statements, only simple transfer pricing questions are answered; moreover, EAS are not binding.

According to the OECD Model Tax Convention, Article 25 about mutual agreement procedure, Bilateral and multilateral APA procedures can be accepted. Filing multilateral or bilateral APAs is not subject to filing fees. However, implementing the outcomes of such procedures can be subject to a fee.

f) Audit Practice

There is no particular auditing rule regarding transfer pricing; domestic corporate income tax audit rules are applied. Tax authorities can determine the audit scale and must notify taxpayers before commencing the audit. Tax auditors are required to give advance notice of at least one week to the taxpayer before starting an auditing period. Tax auditors mainly focus on some important aspects of transfer pricing, including business restructurings, loss-generating affiliates and inherent establishment issues, and the proper allocation or profit potential along the value chain.

There is no required audit frequency; however, large companies are audited regularly. Taxpayers can expect a tax audit every 4 to 6 years, and the tax audit generally covers 3 financial years.

3. Transfer Pricing Documentation

a) Level of Documentation

The TPDA obliges multinational companies to prepare transfer pricing documentation consisting of:

- Master File;
- Local File;
- Country-by-Country Report (CbCR).

Austrian constituent entities of an MNE Group have to prepare a Master File and Local File if their revenues exceeded the amount of EUR 50 million during the two preceding fiscal years. Furthermore, each Constituent Entity of an MNE Group located in Austria is obligated to submit a Master File upon request of the relevant Tax Office if any constituent Entity of the MNE Group is required to create a Master File under the requirements of any other country or jurisdiction.

MNE Groups that exceeded consolidated sales of 750m Euro in the previous fiscal year additionally have to prepare a Country-by-Country Report. Requirements are fully aligned with the Action 13 minimum standard and the respective EU Directive. Each Austrian entity part of an MNE Group subject to CbCR must report to the competent tax office until the last day of the relevant financial year, whether the ultimate or surrogate parent entity. In case the Austrian entity is neither ultimate nor surrogate parent entity, it must report the residence and identity of the ultimate or surrogate parent entity and the reporting entity to the Austrian tax authorities.

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity, including an indication of whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediate past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed, and the risks borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines in paragraph 1.51.

e) Choice of Transfer Pricing Method

Austria relies on the 2010 OECD Transfer Pricing Guidelines for transfer pricing methods. In particular, the following methods are in use:

- Comparable uncontrolled price (CUP) method;
- Resale price method;
- Cost Cost-plus method;
- Profit split method;
- Transactional net margin (TNMM) method.

The choice of transfer pricing method depends on each situation, but generally should be the most appropriate method. In case more than one method can be applied, the traditional transaction methods are preferred over the transactional profit methods.

f) Economic Analysis – Benchmark Study

Due to Austria's size, only a very limited set of domestic comparables is often available. Thus, the usage of Pan-European data is usually accepted for benchmarking purposes. However, the selected data must be transparent, accessible and the data collection and standardisation process must follow high-quality standards. The choice of comparables depends on the approach that provides for the highest comparability security. The benchmarks should be updated every three years.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalises the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the conduct of parties" parties" the prevailing concept.

h) Financial Statements

Financial statements should include related-party disclosures.

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notificati on Deadline *	Threshold* (Yes/No)	Local Language (Yes/No)*(If "No", it can be filed in English)
Corporate Income Tax	File	Electronic	31 March of second FY or 30 June of first FY	N/A	Yes	No

Master File	Prepare	N/A	31 March of second FY or 30 June of first FY	N/A	Yes	No
Local File	Prepare	N/A	31 March of second FY or 30 June of first FY	N/A	Yes	No
CbCR	File	XML format	12 Months after the FY-end	Last of the reporting FY	Yes	No
XML	File	Special format	12 Months after the FY-end	N/A	Yes	No
Annual Accounts	N/A	N/A	N/A	N/A	N/A	N/A
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A
* Austria has signed the MCAA agreement for the filing of CbCR on 27 January 2016.						
* SMEs are defined as companies with turnover or revenues of a maximum of EUR 50 million.						

There is no requirement for periodic document preparation; however, documents related to transfer pricing must be updated at the time of transfer pricing transactions. Thus, the preparation should be contemporaneous.

The Income Tax Return, if filed electronically, must be submitted at the latest on 30 June of a consecutive year of the tax year. If filed in hard copy, the deadline is by 30 April of the consecutive year of the tax year. Taxpayers represented by tax advisors may submit their income tax returns by 30 April of the second consecutive year of the tax year if not demanded by the tax authority.

Submission of the Master File and Local File to the Competent Tax Office is upon its request within 30 days from the date of filing of the corporate tax return/the tax return, where income is assessed. The CbCR has to be filed electronically no later than 12 months after the last day of the fiscal year.

For assessments of transfer pricing adjustment, the statute of limitations is 5 years from the end of the tax year. The limit may be extended by official acts of the competent tax authority for a maximum of 5 additional years. Thus, the absolute statute of limitations is 10 years.

j) Mandatory Language

Documentation for submission to the Austrian tax authority should be in German or English.

k) Notification Requirement

If there is a constituent company of an MNE group that is tax resident in Austria, it must be notified to the tax authorities and specify whether it is the Representative Parent Company (RPC) or Ultimate Parent Company (UPC). If none of the mentioned ones, it should specify the name and tax residence of the entity liable to reporting.

l) Record Keeping

Austrian Tax Law requires that sufficient documentation must be at hand when lodgmentlodgement of the tax return. Additionally, the OECD and domestic guidelines require transactions among affiliates to be documented. Business transactions among related parties are accepted if they meet the following criteria:

- the agreements are in written form,
- the agreements are well-defined,
- the conditions are at arm's length.

Required and relevant documents for tax purposes are held for 7 years. Documents relating to real estate activities are to be held for 22 years.

m) Penalties and Interest Charges

In case of TP adjustments, interest may be imposed on late payment of additional corporate tax liabilities caused by a transfer pricing assessment. The interest rate is 2% plus the base rate. Late payment of corporate income tax is assessed on the outstanding balance, calculated as the positive difference between the corporate income tax return and tax payments during the tax year, minus any down payments. If the assessment results in a tax credit, interest will be credited to the tax account. In case the late payment interest or tax credit interest is below EUR 50, it will not be assessed. The maximum period for which late payment interest might be levied is 48 months.

For the Master File/Local Filing,

According to the Austrian Administrative Code, failing to submit can result in a punishment of up to EUR 5,000, and if the tax office can show deliberate tax evasion or tax fraud, the fact of non-filing might increase the amount of penalties. The Austrian Federal Fiscal Code provides for tax authorities' compulsory enforcement of legal obligations. According to that general provision, each "penalty" must not exceed EUR 5,000.

For the Country-by-country (CbC) reporting;

According to the Austrian Administrative Code, failure to submit CbCR may result in penalties of up to EUR 5,000. The Act stipulates a maximum penalty of EUR 50,000 for intentional failure to file or satisfy the country-by-country reporting requirements, as well as a penalty of 50% for gross negligence. Namely, Section 49a of the Austrian Financial Criminal Code provides for the following penalties in case of violation of the obligation to transmit the CbC Report (i.e., late/no or incorrect filing):

- In case of deliberate violation: fine up to EUR 50,000;
- In case of grossly negligent violation: fine up to EUR 25,000.

According to section 9 of the VPDG, the penalty can be applied to each unit, the legal organisation, and the management board.