

Germany

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?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Section 1 External Tax Relations Act (<i>Außensteuergesetz</i>) Section 8(3) Corporation Tax Act (<i>Körperschaftsteuergesetz</i>)
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	The External Tax Relations Act aims at allowing to apply the OECD Transfer Pricing Guidelines under German law. Furthermore, the German Federal Ministry of Finance's circular on transfer pricing not only refers to the OECD Transfer Pricing Guidelines but includes them as an annex.	Section 1(1) through (5) External Tax Relations Act Circular on Transfer Pricing (<i>Verwaltungsgrundsätze Verrechnungspreise</i>) of 14 July 2021
3	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.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Section 1(2) of the External Tax Relations Act defines related parties as follows: 1(2) A party is related to the taxpayer if 1. the party in relation to the taxpayer, or the taxpayer in relation to the party, a. holds a stake of at least one quarter directly or indirectly in the subscribed capital, membership rights, participation rights, voting rights or company assets (substantial stake), or b. is entitled to at least one quarter of the profits or liquidation proceeds; or 2. the party is able to exercise a controlling influence directly or indirectly on the taxpayer, or the taxpayer is able to exercise a controlling influence directly or indirectly on the party; or	Section 1(2) External Tax Relations Act

	<p>3. a third party</p> <p>a. holds a substantial stake in both the party and the taxpayer,</p> <p>b. is entitled to at least one quarter of the profits or liquidation proceeds from both the party and the taxpayer, or</p> <p>c. is able to exercise a controlling influence directly or indirectly on both the party and the taxpayer; or</p> <p>4. the party or the taxpayer, when agreeing on the terms of business relations, is in a position to exercise on the taxpayer or on the party influence that is not based on such business relations, or if one of them has an own interest in realisation of the other's income.</p> <p>Sentence 1 no 3 (a) to (c) also applies if, in the third party's relationship to the party and the taxpayer, one of the criteria specified in sentence 1 no 3 (a) to (c) is fulfilled in each case.</p>	
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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;"> <thead> <tr> <th>CUP</th> <th>Resale Price</th> <th>Cost Plus</th> <th>TNMM</th> <th>Profit Split</th> <th>Other (<i>If so, please describe</i>)</th> </tr> </thead> <tbody> <tr> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </tbody> </table> <p>Section 1(3) of the External Tax Relations Act provides for the transfer pricing methods accepted in Germany. In its administrative practice, Germany follows the OECD TPG in this respect.</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>Section 1(3) External Tax Relations Act</p> <p>Para. 3.9 Circular on Transfer Pricing of 14 July 2021</p>
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)										
<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 checked="" type="checkbox"/> Most appropriate method</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p>	<p>Section 1(3) sentence five External Tax Relations Act</p> <p>Para. 3.9 et seq. Circular on Transfer Pricing of 14 July 2021</p>												

		Section 1(3) of the External Tax Relations Act applies the most appropriate method as a criterion for the selection of the applicable transfer pricing method. In its administrative practice, Germany follows the OECD TPG in this respect.	
6	If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.	<input checked="" type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed. <input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>) <input type="checkbox"/> Other (<i>if so, please explain</i>)	
		Since the OECD TPG are included as an Annex in the Circular on Transfer Pricing, the guidance in the OECD TPG is followed in Germany's administrative practice. In German legislation, however, there is no specific guidance on commodity transactions.	
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 Section 1(3) of the External Tax Relations Act provides for a comparability analysis. The Circular on Transfer Pricing in para. 3.18 refers to Chapter III of the OECD TPG.	Section 1(3) External Tax Relations Act Para. 3.18 Circular on Transfer Pricing of 14 July 2021
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	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Section 1(3a) External Tax Relations Act

	statistical measure for determining arm's length remuneration?	Section 1(3a) of the External Tax Relations Act defines the application of the interquartile method. In addition, the Circular on Transfer Pricing in para. 3.29 refers to paras. 3.55 to 3.62 of the OECD TPG.	Para. 2.29 Circular on Transfer Pricing of 14 July 2021
11	Are comparability adjustments required under your domestic legislation or regulations?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Section 1(3) sentence six External Tax Relations Act
		Section 1(3) sentence 6 of the External Tax Relations Act demands comparability adjustments to increase the comparability, when necessary.	
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	Sections 1(3c) and 1a External Tax Relations Act Paras. 3.47 et seq. Circular on Transfer Pricing of 14 July 2021
		The Arm's Length Principle also applies to intangibles.	
13	Does your domestic legislation or regulations provide for transfer pricing rules or special measures regarding hard-to-value intangibles (HTVI)?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Sections 1(3c) and 1a External Tax Relations Act Para. 3.52 Circular on Transfer Pricing of 14 July 2021
		The common Arm's Length Principle also applies to HTVI to the extent that Section 1a of the External Tax Relations Act states special requirements for all intangibles.	
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Sections 5(2) and 4j Income Tax Act (Einkommensteuergesetz)
		Section 5(2) of the Income Tax Act states an accounting ban which does not allow to capitalise self-made intangible fixed assets in the balance sheet. Royalties are not deductible to the extent that they are subject to a non-nexus preference regime at the recipient's end (nexus approach under Chapter 4 of the 2015 Final Report on BEPS Action Item 5, OECD (2016) "Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance").	

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	Paras. 3.64 et seq. Circular on Transfer Pricing of 14 July 2021
		The Arm's Length Principle also applies for intra-group-services.	
16	Do you have any simplified approach for low value-adding intra-group services?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Para. 3.74 Circular on Transfer Pricing of 14 July 2021
		An application of the cost-plus-method with a mark-up of 5 % is accepted.	
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	
Financial Transactions			
18	[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Para. 3.88 Circular on Transfer Pricing of 14 July 2021
		Due to Section 1(3) of the External Tax Relations Act, the common TP rules apply to all transactions, including financial transactions. Additionally, the Circular on Transfer Pricing in para. 3.88 refers to Chapter X of the OECD TPG.	
19	[NEW] Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Section 4h Income Tax Act Section 8a Corporation Tax Act
		Limitation of interest deductions: The German interest limitation rule was introduced in 2008 and limits the deduction of excessive net interest expenses. The OECD and G20 have recommended under BEPS Action Item 4 that an interest deduction restriction comparable to the German interest limitation rule be introduced.	

Cost Contribution Agreements		
20	<p>Does your jurisdiction have legislation or regulations on cost contribution agreements?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>In para. 3.81 of its Circular on Transfer Pricing, the German Federal Ministry of Finance refers to the guidance in Chapter VIII of the OECD TPG in this respect.</p>	<p>Para. 3.81 Circular on Transfer Pricing of 14 July 2021</p>
Transfer Pricing Documentation		
21	<p>Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><i>If affirmative, please check all that apply:</i></p> <p><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 checked="" type="checkbox"/> Other (specify): General transfer pricing documentation upon request and transfer pricing documentation on extraordinary transactions.</p>	<p>Section 90(3) Fiscal Code (<i>Abgabenordnung</i>) Section 138a Fiscal Code Circular on Administrative Principles of 3 December 2020 (<i>Verwaltungsgrundsätze 2020</i>) Circular on Country-by-Country Reports of 11 July 2017 (<i>Anforderungen an den länderbezogenen Bericht multinationaler Unternehmensgruppen</i>) Circular on Country-by-Country Reports of 27 September 2019 (<i>AEAO zu § 138a</i>)</p>
22	<p>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</p> <p>Master File with a threshold regarding returns of EUR 100 million. Master File and Local File are to be submitted upon request for a field audit within 60 days. Transfer Pricing Documentation on extraordinary transactions (see section 3 Ordinance on the Documentation of Profit Allocations): preparation within 6 months after fiscal year, submission 30 days upon request. All of the above have to be provided in German or (if this is reasoned) in another language; in the latter case, a translation into German may be required upon request or in case of domestic court procedures. CbCRs have to be submitted one year after the end of the fiscal year. CbCRs will also be accepted in English.</p>	<p>Sections 90(3) and 138a Fiscal Code, Ordinance on the Documentation of Profit Allocations (<i>Gewinnabgrenzungsaufzeichnungs-Verordnung</i>) Circular on Administrative Principles of 3 December 2020 CbC reports</p>

23	<p>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>In case that the transfer pricing documentation is not provided or provided insufficiently, the authorities are able to estimate the respective income pursuant to section 162(3) Fiscal Code. Furthermore, surcharges are determined pursuant to section 162(4) Fiscal Code.</p>	<p>Section 162(3) and (4) Fiscal Code</p> <p>Circular on Administrative Principles of 3 December 2020</p>
24	<p>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</p>	<p>Exemption for small entities (see section 6 of the Ordinance on the Documentation of Profit Allocations): entities do not have to prepare and submit Transfer Pricing Documentation, but need to present all underlying business papers in relation to the determination of the transfer price.</p>	<p>Ordinance on the Documentation of Profit Allocations</p>
Administrative Approaches to Avoiding and Resolving Disputes			
25	<p>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</p>	<p>Please check those that apply:</p> <p><input type="checkbox"/> Rulings</p> <p><input checked="" type="checkbox"/> Enhanced engagement programs</p> <p><input checked="" type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input checked="" type="checkbox"/> Other (<i>please specify</i>): Joint Audits</p> <p>An APA programme is in place whereby the duration of an APA is 5 years with rollback being allowed. There is an Advanced Mutual Agreement Programme in place pursuant to section 89a of the Fiscal Code which also allows rollbacks in connection with a Mutual Agreement Procedure. The covered period should not exceed five consecutive years and fees apply.</p>	<p>Section 89a Fiscal Code</p> <p>Section 175a Fiscal Code</p> <p>Circular on APAs of 5 October 2006 (<i>Merkblatt für bilaterale oder multilaterale Vorabverständigungsverfahren auf der Grundlage der Doppelbesteuerungsabkommen zur Erteilung verbindlicher Vorabzusagen über Verrechnungspreise zwischen international verbundenen Unternehmen</i>)</p> <p>Circular on MAP and Arbitration Procedures of 27 August 2021 (<i>Merkblatt zum internationalen Verständigungs- und Schiedsverfahren – Streitbeilegungsverfahren - auf dem Gebiet der Steuern vom Einkommen und Vermögen</i>)</p> <p>Circular of 6 January 2017 (Guidance note on coordinated external tax audits with tax administrations of other states and jurisdictions)</p> <p>Germany's MAP Profile</p>

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?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
27	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Other Legislative Aspects or Administrative Procedures

28	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No The Circular on Transfer Pricing, with reference to the OECD TPG, allows and requires year-end adjustments when profit level indicators are out of the range of comparables.	Para. 3.42 et seq. Circular on Transfer Pricing of 14 July 2021
29	Does your jurisdiction make secondary adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Generally, secondary adjustments are possible in accordance with the common tax legislation, especially after a MAP.	Section 175a Fiscal Code

Attribution of Profits to Permanent Establishments

30	[NEW] Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?	<input checked="" type="checkbox"/> Yes <i>In how many tax treaties?</i> In eight tax treaties, namely those concluded with Ireland, Japan, Liechtenstein, Luxembourg, the Netherlands, Norway, the United Kingdom and the United States. Generally, the AOA is applied in all cases with OECD countries.	Section 1(5) External Tax Relations Act Ordinance on the Application of the Arm's Length Principle to Permanent Establishments under Section 1 of the External Tax Relations Act (<i>Betriebsstättengewinnaufteilungsverordnung</i>)
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		<p>If older tax treaties do not contain the new version of Article 7 (OECD MTC 2010 and later) implementation only by interpretation in the light of the AOA report (except transactions of intellectual property) is applicable in all cases of transactions to OECD countries. With respect to transactions of intellectual property, the AOA approach is applicable only in cases where the tax treaty contains Art. 7 in the version of OECD MTC 2010 or later.</p>	<p>Circular on the Allocation of Profits of Permanent Establishments of 22 December 2016 (<i>Verwaltungsgrundsätze Betriebsstättenverteilung</i>)</p>
		<p><input checked="" type="checkbox"/> No</p> <p>In all cases of PEs in non-OECD countries when the relevant tax treaty does not contain the new version of Article 7.</p>	
31	[NEW] Does your jurisdiction follow also another approach?	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
Other Relevant Information			
32	Other legislative aspects or administrative procedures regarding transfer pricing	N/A	
33	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>)	N/A	

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