Germany

WTS Global Country TP Guide

Last Update: December 2017

1. Legal Basis	
Is there a legal requirement to prepare TP documentation?	Yes
Since when does a TP documentation requirement exist in your country?	2003
Are TP policies of multinational enterprises in principle accepted by the tax authorities, if they are in line with the OECD TP Guidelines?	Yes
Which TP methods may be applied?	Comparable uncontrolled price, resale price, cost plus, transactional net margin and transactional profit split
Are any TP methods preferred over others?	German tax authorities tend to have a preference for the CUP method if it can be applied reliably. In practice, TNMM is most commonly applied for routine activities given the common lack of data in the public domain to apply the resale price or cost plus method.
Have the documentation requirements of OECD BEPS Action 13 already been implemented (i.e. the LF, MF and CbCR concepts)?	CbCR/MF/LF implemented.
Reference to documentation and statements of local-government or tax authorities regarding OECD BEPS implementation status	• Local File: Section 90 Para. 3 of the General Tax Code (GTC) and updated version of Legislative Regulation to Section 90 Para. 3 GTC dated 7 July 2017. • Master File: Section 90 Para. 3 of the General Tax Code (GTC) and updated version of Legislative Regulation to Section 90 Para. 3 GTC dated 7 July 2017. • CbCR: Section 138a of the General Tax Code (GTC)
Reference to relevant articles of law, legislative regulation or applicable administrative guidance that are in place for TP documentation in general	Same as above. In addition, there are further articles of law, legislative regulations, administrative circulars and case law applicable to transfer pricing in general. Most notably, these include the following laws: Section 1 of the Foreign Transaction Tax Act (among others the arm's length principle), Section 8 Para. 3 of the Corporate Tax Act (hidden profit distribution), Section 4 Para. 1 of the Income Tax Act (hidden profit injection), Section 164 of the General Tax Code (penalties), EU Administrative Assistance Act (exchange of information) and Anti-BEPS Implementation Act. There are also further legislative regulations on topics such as on Permanent Establishment Apportionment and on the transfer of functions. Additionally, there are over 20 additional Administrative Circulars on various transfer pricing matters, such as Circulars on PEs from 1999, Circulars on cost allocation agreements from 1999, Circular governing cross-border secondments from 2001, Circular on Administration Principles for Procedures from 2005, Circular on international mutual agreement and arbitration procedures from 2006, Circular on the procedure for APAs from 2006, Circular on the transfer of functions from 2010 and Circular on the application of Section 1 of the Foreign Tax Act on marginal amortisations on loans issued to foreign related entities.

2. Master File (MF)	Yes
What is the (consolidated revenue) threshold requirement for the obligation to prepare a MF?	EUR 100,000,000
As from which year does this obligation exist?	All German entities with annual sales of at least EUR 100 million in the previous financial year. Applies for fiscal years starting after 31 Dec. 2016
When does the Master File need to be available?	There is no contemporaneous documentation requirement for ordinary business transactions in Germany. This implies that in theory documentation for ordinary business transactions can be prepared upon request in a tax audit. In practice, it is recommended to prepare TP documentation in advance due to the 60 day time limitation between the submission request and the submission deadline. Only extraordinary transactions must be documented contemporaneously, meaning within six months of the end of the business year in which the transaction has took place. The following qualify among others as extraordinary transactions: • the conclusion and amendment of long-term agreements; • the conclusion of cost allocation agreements; and • transfer of functions / significant changes in the FAR profile.
When does it need to be submitted?	Upon request • 60 days upon request, usually in a tax audit • 30 days upon request for extraordinary transactions, usually in a tax audit
Does the MF have to be prepared in the relevant local language ?	No. In theory, German taxpayers must ask for approval to submit transfer pricing documentation in English and it is then up to the discretion to the tax audit to accept or deny the request. In practice, many German taxpayers prepare transfer pricing documentation, especailly the MF, in English. At times, certain parts of the documentation might have to be translated into German, if requested by the tax auditor.
Is documentation in English permissible?	Yes (generally)
What are the possible consequences of not having the MF available?	
Penalties?	Yes
Imprisonment?	No
Shifting of the burden of proof?	Yes
Other?	Yes
To which extent do the local rules differ from the OECD standard regarding the OECD content requirements for the MF as shown in the BEPS implementation overview chart?	Consistent with OECD requirements.

3. Local File (LF)	Yes
What is the threshold requirement for the obligation to prepare a LF?	Cross-border transactions with affiliated legal entities and/or foreign PEs (> 25% shareholdings) greater than: • EUR 6 million for transfer of goods (EUR 5 million for fiscal years up to and including 2016) • EUR 0.6 million for other services (EUR 0.5 million for fiscal years up to and including 2016) in the relevant fiscal year
As from which year does this obligation exist?	Updated Local File documentation requirements are first applicable for fiscal years starting after 31 Dec. 2016.

When does the LF need to be available?	There is no contemporaneous documentation requirement for ordinary business transactions in Germany. This implies that in theory documentation for ordinary business transactions can be prepared upon request in a tax audit. In practice, it is recommended to prepare TP documentation in advance due to the 60 day time limitation between the submission request and the submission deadline. Only extraordinary transactions must be documented contemporaneously, meaning within six months of the end of the business year in which the transaction has took place. The following qualify among others as extraordinary transactions: the conclusion and amendment of long-term agreements, the conclusion of cost allocation agreements, transfer of functions / significant changes in the FAR profile as well as any business transactions in connection with a significant change in the business strategy.
When does the LF need to be submitted?	Upon request. • 60 days upon request, usually in a tax audit • 30 days upon request for extraordinary transactions, usually in a tax audit.
Does the LF have to be prepared in the relevant local language?	Yes. In theory, German taxpayers must ask for approval to submit transfer pricing documentation in English and it is then up to the discretion to the tax audit to accept or deny the request. In practice, many German taxpayers prepare transfer pricing documentation, especailly the MF, in English. At times, certain parts of the documentation might have to be translated into German, if requested by the tax auditor.
Or is documentation in English permissible?	Yes, if the tax audit approves a German taxpayer's request to submit transfer pricing documentation in English.
What are the possible consequences of not having the LF available?	
Penalties?	Yes
Imprisonment?	No
Shifting of the burden of proof?	Yes
Other?	Yes
To which extent do local rules differ from the OECD standard regarding the OECD content requirements for the LF as shown in the 2017 OECD TP Guidelines?	The German Local File must include the following additional information: • Present the information that was available at the time when the transfer price was determined (→ focus on Price-Setting Approach) • Detailed information on database studies relied upon for purposes of setting or verifying transfer prices have to be prepared and documented. • Support the weighting of allocation factors with quantitative data when applying the profit split method or a contribution analysis. • Transfer Pricing documentation is not restricted to relationships under civil law but applies to all circumstances which are of economic importance for the relevant I/C transaction. The German Local File must not include the following information listed in the OECD standard template: • Information on key competitors; and • Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements (but is usually requested in an audit).

4. Country-by-Country Reporting	Yes
What is the threshold requirement for the obligation to prepare Country-by-Country Reporting?	EUR 750 million
As from which year does this CbCR obligation exist?	All entities with a consolidated sales of at least EUR 750 million in the previous financial year • For primary reporting, CbCR is first to be prepared for fiscal years starting after 31 Dec. 2015 • For secondary reporting, CbCR is first to be prepared for fiscal years starting after 31 Dec. 2016
When and how do the tax authorities need to be notified who the reporting entity is?	The German taxpayer has to declare in its tax return if it is a (a) parent company of MNE, (b) designated surrogate parent company or (c) subsidiary of MNE. The subsidiary has to declare in its tax return the name of the MNE's headquartered entity and the competent authority to which it has submitted the CbCR. Notification needs to be made in German and applies to tax years starting after 31 December 2016. Failure to provide this information may cause the German subsidiary to be required to submit CbCR by itself.
If the reporting entity (ultimate parent or surrogate parent) is in your country, what is the CbCR submission deadline?	12 months from the end of the fiscal year to which CbCR relates
Are there any deviating submission deadlines for the secondary mechanism?	Yes. Only the first submission deadline for secondary reporting is one year later than for primary reporting. See above.
Does your country have a requirement that the financial figures of the group need to be aligned with?	No
Does your country have a requirement that the financial years of the group need to be aligned with?	No
Where is the CbCR to be submitted ?	CbCR is to be submitted electronically to the German Federal Central Tax Office ("BZSt"). For fiscal years starting in 2019, a registration at the BZStOnline-Portal is required. Up to the year 2019, CbCR is to be submitted via email as a transition solution: cbcr@bzst.de-mail.de. No registration is required during the time period for which the transition solution applies.
How is the CbCR to be submitted, specifically, is there any prescribed standard?	CbCR is to be submitted using the officially prescribed xlm-standard in line with the OECD. It is envisaged that the data will be submitted electronically using the mass data interface ELMA from 2019 onwards.
What are the possible consequences of not having the CbCR available?	
Penalties?	Yes
Imprisonment?	No
Shifting of the burden of proof?	No (but possibly in case of notification failure)
Other?	Yes
To which extent do your local rules differ from the OECD standard regarding the content requirements for the CbCR as shown in the 2017 OECD TP Guidelines?	Consistent with OECD requirements
Did your country sign the Multilateral Competent Authority Agreement on the Exchange of CbC Reports ("CbC MCAA")?	Yes
Did your country enter into other information exchange agreements, such as on a bilateral basis?	Yes

Please specify the country involved and date the agreement came into force.	The EU Automatic Information Exchange Directive was implemented in Germany in December 2015. Country-by-Country Reporting data with the US will be exchanged pursuant to bilateral competent authority arrangements (CAAs), which relies on the double taxation conventions (DTC) (currently in negotiation). Furthermore, Germany has entered into Tax Information Exchange Agreements (TIEA) with: British Virgin Island - 05.10.2010 Dominica - 21.09.2010 Saint Lucia - 07.06.2010 Tuks and Caicos Islands - 04.06.2010 Cayman Islands - 27.05.2010 Bahamas - 09.04.2010 St. Vincent and Grenadines - 29.03.2010 Anguilla - 19.03.2010 Liechtenstein - 02.09.2009 Gibraltar - 13.08.2009 Bermuda - 03.07.2009 Guernsey - 29.03.2009 Isle of Man - 02.03.2009 Jersey - 04.07.2008
Can a taxpayer in your country fulfil his CbCR requirement by referring to the reporting entity in the same or another country?	Yes

5. TP disclosure in tax return or transfer pricing specific returns	
Does a taxpayer need to disclose information regarding TP documentation in his tax return?	No
When a taxpayer files a tax return for which he understands or should understand that the result reported in that tax return is too low due to incorrect transfer pricing, what could be the legal consequences?	Intentionally submitting an incorrect / too low tax return and failing to inform the tax authorities accordingly constitutes a tax crime. Legal consequences may range from (monetary) fines to imprisonment of up to five years, in serious cases of up to 10 years. If income is understated due to gross negligence, the act is considered to be a tax offence subject to a (monetary) fine.
What could be the consequences for the tax advisor/accountant/administrator drafting and filing the tax return of a client where that advisor/accountant/administrator understands or should understand that the result reported is too low due to incorrect TP?	Intentionally submitting an incorrect / too low tax return and failing to inform the tax authorities accordingly constitutes a tax crime. Legal consequences may range from (monetary) fines to imprisonment but are reduced as/if it is only a participation in the tax fraud of the taxpayer. If income is understated due to gross negligence, the act is considered to be a tax offence subject to a (monetary) fine.
Does a taxpayer need to file TP-specific returns?	No

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6. Benchmarking	
Is there any local guidance or requirement with regard to the preparation of a benchmark study?	Yes. The draft updated version of Legislative Regulation to Section 90 Para. 3 GTC dated 7 July 2017 states if the taxpayers has relied on databases to determine transfer prices, the search strategy, the applied search criteria, the search hits as well as any quantitative and qualitative screenings applied are to be documented. The whole search process must be comprehensible and allow the tax audit to test or replicate the search. The database configuration relied upon at the time the search was conducted is to be documented. Furthermore, the Circular on Administration Principles for Procedures dated 12 April 2005 provides that among others the following information must be provided by the taxpayer: • Exact specification of the database (name, provider, version, Medium, license period); • Criteria of the database provider for the inclusion of company data in the database; • General description of the total company data contained in the database; • In theory, explanation of the structure of the profit and loss account used in the database and the balance sheet; • The selection steps and the reasons for their application against the background of the functional and risk profile of the audited company; • Explanation of the industry classification and justification for the selected industry in the database; • Explanation of any adjustment calculations that may be made; • Explanation of the used calculation models and software programs (e.g. CAPM model, regression analysis); and • To designate all companies that have been eliminated in the context of a manual selection process, i.e. due to subjective assessment (so-called qualitative screening). It is also required to state the reasons for the elimination.
Are there any materiality thresholds that apply for the requirement to have a benchmark study available?	No (not beyond the documentation thresholds)
Does your country apply the general guidance by the OECD to prepare a new benchmarking search every three years and an update of the financial data of the accepted comparable in year 2 or 3?	No
Or is a new search every three years without any financial updates in year 2 and 3 sufficient?	Yes. So far it has often been sufficient to prepare a new benchmarking study every three years (without any updates of the financial data of the accepted comparable companies in year 2 and 3) as long as there have not been any changes to factors affecting transfer prices or the value chain contribution.

7. Year-end adjustments	
Are year-end adjustments permissible?	Yes
Does the taxpayer have to comply with any specific features or guidance?	Yes. German tax authorities especially want to see that the adjustments follow a pre-determined mechanism that is laid down and agreed upon in writing between the relevant related parties in advance.

8. Transfer Pricing Audit and Dispute Resolution Mechanisms	
What are currently the main TP areas of scrutiny by the tax authorities in your country?	Intercompany financing, especially cash pools, losses, umbrella brand and compliance with OECD BEPS. We also expect that data alignment issues will be further scrutinized.
Based on your experience, are joint or multilateral audits initiated and carried out?	Yes
Does the taxpayer have the option to apply for bilateral or multilateral APAs?	Yes
Are there any restrictions?	The German taxpayer has to consent to not filing an appeal against the relevant tax assessments with regard to the results of the APA agreement. The German tax authorities are only bound to the APA agreement if: • the underlying facts and circumstances to the APA agreement are met; • the critical conditions are adhered to; and • the tax authorities receive the relevant financial statements. The German taxpayer must also prepare and submit annual APA compliance reports.

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