

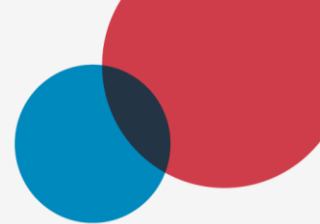


TRANSFER PRICING & THE NEW WORLD OF COUNTRY-BY- COUNTRY REPORTING

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Your global tax partner

SESSION OVERVIEW



TRANSFER PRICING AND THE NEW WORLD OF COUNTRY-BY-COUNTRY REPORTING

Xaver Ditz and Marc Alms, co-leaders of the Taxand global transfer pricing service line, led a panel that included Manfred Naumann, the well-known former senior member of the German tax administration, in discussions around the new world of country-by-country reporting requirements. Also on the panel were Karishma R. Phatarphekar of BMR Taxand India, Stefano Bognandi of Fantozzi Taxand Italy and Jens Brodbeck of ENSafrica Taxand South Africa.

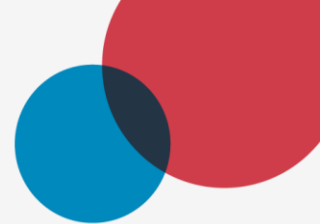




NEW TP DOCUMENTATION

MANFRED
NAUMANN

CONTENTS



1. TP documentation (OECD)
2. History: Note
3. DAC4 (Mutual Assistance Directive: Amtshilferichtlinie)
4. Implementation: General Tax Code
5. Amendments to German TP Documentation Guidance
6. Special: CbCR (new)
7. In addition: Public CbCR (transparency)
8. Taxand's Take

TP DOCUMENTATION (OECD)



Three-tiered approach consisting of:

MASTER FILE

- ❖ High-level overview: The group's business activities, global TP policy, global distribution of added value and income.

LOCAL FILE

- ❖ Detailed information on the group's business transactions in the local country, statement on compliance of prices with the arm's-length principle.

Country-by-country report

- ❖ Country-by-country report based on the consolidated financial statements, allocation of business activities, of turnover, of profits and of taxes paid:
 - **Confidentiality**
 - **Limitation of use.**

HISTORY: NOTE



Foundation

EU-TPD (EU Joint Transfer Pricing Forum):

- ❖ Two tiered approach: 'Master File'/'Local File'
- ❖ Important goal: 'consistency'
- ❖ Only optional for taxpayers.

CbCR (NGOs), origin:

- ❖ Raw material suppliers, explorative industries
- ❖ To fight corruption, bribery
- ❖ For 'third world countries'
- ❖ Completely different target.

DAC4 (MUTUAL ASSISTANCE DIRECTIVE: AMTSHILFERICHTLINIE)



Federal Ministry of Finance's concerns about DAC4 proposal

- ❖ **Obligation** of MS to include a secondary mechanism if the ultimate parent does not file CbCR (OECD: only possibility for such an obligation)
- ❖ **Automatic sharing** of CbCR 'beneath' the original scope of the OECD template (different CbCRs for one MNE-Group)
- ❖ Separate **penalty**.

OUTCOME OF NEGOTIATIONS:

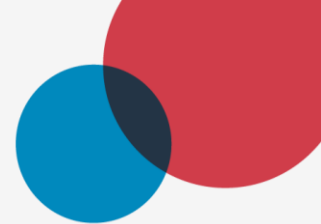
- ❖ Secondary mechanism one year later (US)
- ❖ Secondary mechanism limited to available information.

CONSEQUENCE: MUST BE IMPLEMENTED

- ❖ Mutual Assistance Directive Implementation Act (Amtshilferichtlinie-Umsetzungsgesetz).

❖ TAXAND

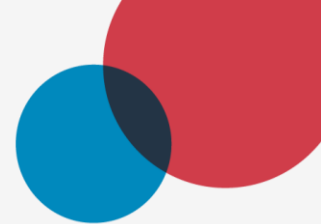
IMPLEMENTATION: GENERAL TAX CODE



Overview

❖ Sec. 90(3) GTC (Draft Transfer Pricing Documentation Ordinance)	Only modified
❖ Sec. 138a GTC	CbCR (new)
❖ Sec. 162 GTC	Estimation(s), focused
❖ Sec. 379 GTC	Separate penalty (modest)
❖ Mutual Assistance Directive Implementation Act	Amended (almost identical)

AMENDMENTS TO GERMAN TP DOCUMENTATION GUIDANCE* (1)



- ❖ The **OECD's transfer pricing documentation requirements** have been **transposed into national law**, Sec. 90(3) German General Tax Code (GTC – Abgabenordnung) as part of the **Anti-BEPS Implementation Act** (Anti-BEPS-Umsetzungsgesetz), Federal Tax Gazette Part I 2016, p. 3000
- ❖ On February 23, 2017 the German Ministry of Finance published Draft Transfer Pricing Documentation Ordinance* concerning **technical details to the (slight) amendments to Sec. 90(3) GTC**
- ❖ The content amendments to the Draft Transfer Pricing Documentation Ordinance can be divided into **three categories**:

Implementation of the
OECD rules.



Clarification or amendment
of existing rules.

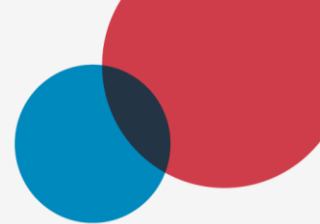


New rules.



* Gewinnabgrenzungsaufzeichnungsverordnung

AMENDMENTS TO GERMAN TP DOCUMENTATION GUIDANCE (2)



Implementation of the OECD rules

Adjustment of the country-specific, company-specific documentation (local file)
– Sec. 4 of the Draft Ordinance:

Description of **management structure** and **organisational structure** (organigram).

Outline of **business strategy**.

Clarification that **'cost allocations'** constitute business relationships that must be documented.

The **choice of transfer pricing method** applied must be disclosed as well as its appropriateness.

Time of determining the **transfer prices**.

Record of information that was **(i)** available when the transfer price was determined and **(ii)** significant for determining the price.

Use of the OECD term **'advance agreement'** (Vorabzusage) → unilateral advance pricing agreements (APA) are in general not accepted in Germany.

AMENDMENTS TO GERMAN TP DOCUMENTATION GUIDANCE (3)



Implementation of the OECD rules

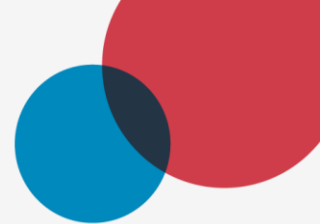
Inclusion of more specific rules for **preparing the master file** – Sec. 5 of the draft guidance:

Annex I to the Draft Ordinance contains the **requested content for master files** in which **solely the OECD requirements have been implemented.**

The taxpayer gains **discretion to interpret indefinite legal terms** but only if it can be demonstrated by the taxpayer that he is performing a consistent cross-border implementation of his documentation.

The taxpayer is required to **prepare the master file using sound commercial judgement** to meet the aims of the master file with reasonable effort.

AMENDMENTS TO GERMAN TP DOCUMENTATION GUIDANCE (4)



Clarification or amendment of existing rules

The Draft Ordinance rules out that **the documentation requirements** do not only apply to business relationships **under civil law**, but also to business relationships **of economic significance**.

Up to now it is **unclear** how the **'economic significance'** of business relationships is measured. This should be clarified by the amendment of the Administrative Principles Procedure (Verwaltungsgrundsätze-Verfahren).

To the **advantage of taxpayers**: In the Draft Ordinance the **threshold at which transfer prices have to be documented** was increased by 20%.

Consequently, taxpayer have to prepare written documents only if the **total revenue** for transactions with related parties:

- ❖ **For supplying goods exceeds EUR 6 million** or
- ❖ **For providing other services exceeds EUR 0.6 million.**

AMENDMENTS TO GERMAN TP DOCUMENTATION GUIDANCE (5)



New (?) components

Sec. 4(3) of the draft guidance implements regulations on the use of databases. The first two sentences have only been aligned with the content of the Administrative Principles Procedure (Verwaltungsgrundsätze-Verfahren) of April 12, 2005, subparagraph 3.4.12.4

New (binding) requirement: The **search process** must be **electronically reproducible at the time of the tax audit**. This means that the taxpayer has to ensure that the **tax authorities** can use the database without restriction and, in particular, can **call up the version of the database used at the time the transaction was agreed to, to be able to perform alternative searches on the same basis as the taxpayer**.

SPECIAL: CbCR (NEW)



Sec. 138a GTC

Paragraph 1

Obligation of 'domestic ultimate parent companies'.



Paragraph 2

Content of CbCR (OECD).



Paragraph 3

Possibility to file CbCR by an 'included domestic constituent entity' if the 'foreign ultimate parent' decides so.



Paragraph 4

'Secondary mechanism' = obligation of included domestic constituent Entities if the Foreign Ultimate Parent does not file CbCR.



SPECIAL: CbCR (NEW)



Sec. 138a GTC

Paragraph 5

Statement in the tax return of who in the multinational group will file CbCR.



Paragraph 6

Deadline to report CbCR to the Federal Central Tax Office (BZSt).

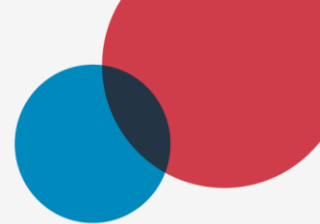


Paragraph 7

Competence of BZSt to exchange CbCR.



IN ADDITION: PUBLIC CbCR (TRANSPARENCY)



KOM proposal: Public CbCR Accounting Directive (April 2016).

Same template as G20/OECD Action 13.

CbCR to be **published on company website.**

Lead responsibility: Federal Ministry of Justice and Consumer Protection (transparency!).

Federal Ministry of Finance:

- ❖ **Concerns:** Different position, conditions of Action 13
- ❖ **Result** (probably): Abstention of GER = in effect: Rejection.

BUT: Voting by qualified majority, GER (and others) can be overruled.

Political pressure from EP and NGOs.

Not yet decided!



TAXAND'S TAKE



1

Consequences for
companies?

2

Consequences for
administration?

3

Your position?



**SPEAKER
PROFILES**

SPEAKER PROFILE



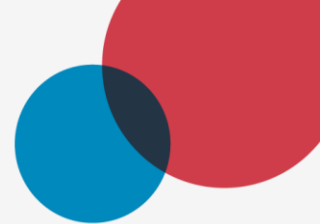
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Marc Alms is based in New York where he is a managing director at Alvarez & Marsal Taxand USA. He has more than 15 years of experience leading engagements in the planning and documentation of transfer pricing policies, obtaining Advance Pricing Agreements and assisting with Competent Authority for multinationals across a broad range of industries.

SPEAKER PROFILE



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Stefano Bognandi is based in Milan where he is a partner of Fantozzi & Associati, Taxand Italy. He is a member of the Institute of Chartered Accountants and Auditors of Milan, and has more than 20 years of experience providing tax advice on both Italian and international tax issues, specialising in transfer pricing and business restructuring.

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Jens Brodbeck is an Executive at ENSafrica, which is Taxand South Africa. He specialises in corporate international tax, with a specific focus on transfer pricing, inbound investments and cross-border tax planning. He has been involved in transfer pricing since the introduction of the South African transfer pricing rules in 1995, assisting international and South African multinationals with their transfer pricing needs.

SPEAKER PROFILE



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Xaver Ditz is based in Bonn where he has been a partner at Flick Gocke Schaumburg, Taxand Germany, since 2005. His areas of specialisation include the taxation of corporate groups, international tax law, transfer pricing, tax audits and MAPs. Xaver is a lecturer at the University of Trier and the University of Zürich, and a guest lecturer at the German Federal Finance Academy.

SPEAKER PROFILE



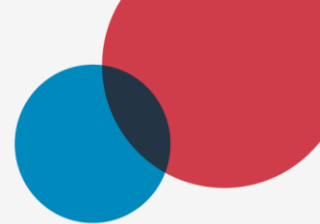
Manfred Naumann

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Manfred Naumann was active in the field of international taxation for many years, until his retirement earlier this year. His experience includes being a member of the EU Joint Transfer Pricing Forum, a working group of the European Commission, and of the Working Party 6 of the OECD's Fiscal Committee dealing with transfer pricing issues. In recent years the Action Points of 'Base Erosion and Profit Shifting' (BEPS) concerning transfer pricing have been a core focus for Mr. Naumann.

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Karishma Phatarphekar is a Partner and national leader of the transfer pricing practice with BMR & Associates LLP, Taxand India. She has extensive experience in dispute management and resolution including MAP/APAs, global compliances and consulting on complex transfer pricing issues. Her industry expertise is life sciences and information technology industries.



ABOUT TAXAND

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