

Germany publishes new draft legislation on Transfer Pricing Documentation

The German Federal Ministry of Finance recently published a discussion paper on the amendment of the Decree on the type, content and extent of the transfer pricing documentation.

Background

The German Federal Ministry of Finance recently published a discussion paper on the amendment of the Decree on the type, content and extent of the transfer pricing documentation ("DRAFT TP Documentation Decree", German abbreviation "GAufzV"). The TP Documentation Decree provides details on what needs to be part of the transfer pricing documentation report and is as decree-law binding for taxpayers and tax authorities. The revised TP Documentation Decree – if it becomes effective in the proposed form – applies to all tax assessment periods from 2017 onwards. The changes in the TP Documentation Decree are motivated by the desire of the German government to implement BEPS action point 13/ OECD Transfer Pricing Guidelines Chapter V ("OECD Guidance"). However, as outlined below, the German Ministry of Finance includes provisions in the DRAFT TP Documentation Decree which go beyond the OECD Guidance.

Overview

The proposed DRAFT TP Documentation Decree corresponds mainly the OECD Guidance defining the relevant information to be included in the Master File and the Local File. However, it contains some special requirements including:

- The requirement (according to sec. 4 para. 1 no. 3 (b) DRAFT TP Documentation Decree) to name the person who actually took the decision regarding the intercompany transaction.
- The requirement (according to sec. 4 para. 1 no. 4 (b) DRAFT TP Documentation Decree) to present the information which were available at the point in time when the transfer price was determined.
- The requirement (according to sec. 4 para. 3 DRAFT TP Documentation Decree) to provide tax auditors access to the database used for the benchmarking analysis (in the version used by the taxpayer/ advisor at the point in time when the search was conducted).
- The requirement (according to sec. 1 para. 3 sent. 4 DRAFT TP Documentation Decree) to support the weighting of allocation factors with quantitative data when applying the profit split method or a contribution analysis.

Despite the OECD consensus on the possibility to submit the Master File e.g. in English, the possibility to submit the Master File not in German is only possible on a separate taxpayer's request and requires the approval of the tax authorities.

Outlook

It is to be expected that the DRAFT TP Documentation Decree will be promptly forwarded to the federal government for further discussion. Due to the intended legal validity as of the 2017 assessment period as well as the forthcoming elections in autumn 2017, it can be expected that the change of the TP Documentation Decree is finalized and adopted before the summer break. We will keep you posted on further developments in particular with regard to updates of the necessary content of a transfer pricing documentation report.

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