

Transfer Pricing Country Profile
(to be posted on the OECD Internet site www.oecd.org/ctp/tp/countryprofiles)

Name of Country: Austria Date of profile: 21. September 2012

1. Reference to the Arm's Length Principle

Section 6 paragraph 6 of the Austrian Income Tax Act contains the arm's length principle dealing with transfers of assets (tangible or intangible) or services into and out of the country. Thereupon it is provided that assets transferred to a foreign PE or business of the same taxpayer, as well as to a group of companies, must be valued at the price that would be realized if the assets were sold to unrelated parties.

Furthermore, Section 8 paragraph 2 of the Austrian Corporate Tax Act provides that hidden profit distributions do not reduce the taxable profit of the corporation and Section 8 paragraph 1 of the Austrian Corporate Tax Act correspondingly provides that hidden contributions by a shareholder do not increase the taxable income of the corporation.

Sections 21 et seq. of the Federal Procedural Tax Act provide for as a general rule the principle of substance over form which entitles the tax administration to look through artificial arrangements of civil law and to apply taxation measures on the basis of the factual economically intended fact pattern rather than the civil law construction chosen.

2. Reference to the OECD Transfer Pricing Guidelines (if any)

The OECD Transfer Pricing Guidelines 1995 have been published as official regulations in the official Gazette of the Austrian Tax Authority. They are currently serving as the main basis for the interpretation of the arm's length principle of Art 9 OECD-Model Convention.

A reference to the OECD Transfer Pricing Guidelines can also be found in the Austrian Transfer Pricing Guidelines 2010, at para 1 et seq.

3. Definition of related parties

There is no specific definition of related parties in the Austrian Income Tax Act. General reference is made to Art 9 OECD-Model Convention.

4. Transfer pricing methods

With regard to the proper method of establishing transfer prices, Austria relies on the general recommendations of the OECD Transfer Pricing Guidelines. Further information – in line with the OECD Transfer Pricing Guidelines – can be found in the Austrian Transfer Pricing Guidelines 2010, para 20 et seq.

5. Transfer pricing documentation requirements

The general statutes in the Austrian Federal Fiscal Code are also applicable for Transfer Pricing Documentation and are interpreted by means of chapter 5 of the OECD-Transfer Pricing Guidelines.

6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

[...]

7. Relevant regulations on Advance Pricing Arrangements

Bilateral Advance Pricing Agreements are currently pursued on the basis of Art 25 of the OECD-Model Tax Convention.

8. Link to relevant Government Internet sites

www.bmf.gv.at

9. Other relevant information

[...]

Note

1. Relevant provisions of domestic legislation referring to the Arm's Length Principle.
2. Reference if any to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations in domestic legislation or regulations.
3. Relevant legislation or regulations containing a definition of related parties or associated enterprises.
4. Relevant legislation or regulations containing guidance on transfer pricing methods including hierarchy among them if any.
5. Relevant regulations if any in relation to transfer pricing documentation requirements.
6. Relevant regulations if any on specific transfer pricing audit procedures and / or specific transfer pricing penalties.
7. Relevant regulations if any on Advance Pricing Arrangements.
8. Addresses of the Internet sites of the relevant authorities in charge of transfer pricing policy, its administration and Advance Pricing Arrangements.
9. Other relevant information, for instance having gone through a peer review, or having new transfer pricing regulations in preparation.