

Austria

Transfer Pricing Country Profile

Updated October 2017

	SUMMARY	REFERENCE
The Arm's Length Principle		
1	<p>Does your domestic legislation or regulation make reference to the Arm's Length Principle?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>Section 6 paragraph 6 of the Austrian Income Tax Act</p> <p>Section 8 paragraph 2 of the Austrian Corporate Tax Act</p> <p>Section 8 paragraph 1 of the Austrian Corporate Tax Act</p> <p>Sections 21, 22 and 23 et seq. of the Federal Procedural Tax Act</p>

2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	<p>The OECD Transfer Pricing Guidelines 1995 have been published as official regulations in the official Gazette of the Austrian Tax Authority (AÖFV 1996/114). The OECD TPG, as they may be revised from time to time, serve as the main basis for the interpretation of the arm's length principle of Art 9 OECD-Model Convention.</p> <p>A reference to the OECD Transfer Pricing Guidelines can also be found in the Austrian Transfer Pricing Guidelines 2010, at para 1 et seq. According to para 2 of the Austrian Transfer Pricing Guidelines 2010, the arm's length principle of Austrian Double Taxation Conventions has to be interpreted in the light of the principles of the OECD and under consideration of the OECD TPG, as they may be revised from time to time.</p>	<p>Section 6 paragraph 6 of the Austrian Income Tax Act</p> <p>Austrian Transfer Pricing Guidelines 2010, para 2</p>												
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.	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>In general, reference is made to Art 9 OECD-Model Convention. Furthermore, Section 6 paragraph 6 of the Austrian Income Tax Act (see under question 1) contains a 25% threshold in respect of related parties.</p>	<p>Article 9 OECD-MC</p> <p>Section 6 paragraph 6 of the Austrian Income Tax Act</p>												
Transfer Pricing Methods															
4	Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?	<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" data-bbox="678 1015 1525 1174"> <thead> <tr> <th>CUP</th> <th>Resale Price</th> <th>Cost Plus</th> <th>TNMM</th> <th>Profit Split</th> <th>Other (If so, please describe)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> </tbody> </table> <p>Austria applies the OECD TPG, which means that other methods are allowed. But in practice they are not often used.</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Section 6 paragraph 6 of the Austrian Income Tax Act</p> <p>Sections 21, 22 and 23 et seq. of the Federal Procedural Tax Act</p>
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)										
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>										
5	Which criterion is used in your jurisdiction for the application of transfer pricing methods?	<p>Please check all that apply:</p> <p><input checked="" type="checkbox"/> Hierarchy of methods</p> <p><input checked="" type="checkbox"/> Most appropriate method</p> <p><input type="checkbox"/> Other (if so, please explain)</p>	<p>Austrian Transfer Pricing Guidelines 2010, para 43</p>												

		The selection of a transfer pricing method always aims at finding the most appropriate method for a particular case. 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 43. Where a traditional transaction based method (CUP, Resale Price and Cost Plus) and a transactional profit method can be applied in an equally reliable manner, the traditional transaction method is preferable to the transactional profit method.	
6	If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.	<input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed. <input checked="" 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>)	Austrian Transfer Pricing Guidelines 2010, para 68 et seq
		According to the Austrian Transfer Pricing Guidelines 2010, para 68 et seq. – which are in line with the OECD Transfer Pricing Guidelines – with regard to commodity transactions the appropriate method depends on the role as a toll manufacturer (Cost Plus) or as a distribution company (Resale Price or CUP).	
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	Austrian Transfer Pricing Guidelines 2010, para 50 et seq
		The respective guidance under the Austrian Transfer Pricing Guidelines 2010, para 50 et seq., follows the guidance as set out under Chapter I, D.1 of the OECD TPG.	
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Austrian Transfer Pricing Guidelines 2010, para 50
		According to the Austrian Transfer Pricing Guidelines 2010, para 50, the choice of comparables rather depend on the approach that provides for the highest comparability security.	

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 statistical measure for determining arm's length remuneration?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If the appropriate use of a transfer pricing method leads to an arm's length range, any price within this range will be allowed.	Austrian Transfer Pricing Guidelines 2010, para 49
11	Are comparability adjustments required under your domestic legislation or regulations?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No In line with the international practice, an arm's length range shall be narrowed by formulation of quartiles.	Austrian Transfer Pricing Guidelines 2010, para 67
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 The Austrian Transfer Pricing Guidelines 2010 provides guidance in respect of intangibles at different places (e.g. para 78, 102 et seq.).	Austrian Transfer Pricing Guidelines 2010 para 78 , 102 et seq
13	Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (HTVI)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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 According to the Corporate Income Tax Code royalty payments are non deductible under certain circumstances (i.e. in intra group situations, where there is no or low taxation at the level of the receiving company). According to Section 197 paragraph 2 of the Austrian Entrepreneurial Law - the costs for intangible assets, which are not acquired for valuable consideration, must not be capitalised.	Section 12 paragraph 1 (10) of the Corporate Income Tax Code Section 197 paragraph 2 of the Austrian Entrepreneurial Law Section 99a of the Austrian Income Tax Act

Section 99a of the Austrian Income Tax Act contains the implementation of the European Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States.

Intra-group Services

15	<p>Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Among other guidance on intra-group services, domestic legislation explicitly provides guidance on direct charge methods. Accordingly the Austrian TPG provides that a direct-charge method facilitates the determination of whether the charge is consistent with the arm's length principle, especially where specific services that form a main business activity are provided not only to associated enterprises but also to independent parties. However, in some cases an indirect-charge method may be necessary, e.g. where a separate recording and analysis of the relevant services for each beneficiary would involve a burden of work that would be disproportionately heavy in relation to the activities themselves. Each case is dependent upon its own facts and circumstances and the arrangements within the group.</p>	<p>Austrian Transfer Pricing Guidelines 2010, para 74-80</p>
16	<p>Do you have any simplified approach for low value-adding intra-group services?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>As a general guidance, a profit margin between 5-15% can serve as an orientation in respect of services of routine character.</p>	<p>Austrian Transfer Pricing Guidelines 2010, para 77</p>
17	<p>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Besides the Austrian Transfer Pricing Guidelines 2010 there is Section 6 paragraph 6 of the Austrian Income Tax Act (see under questions 1 and 3). In case of related transactions (associated enterprises and permanent establishments) the price of goods or services equals to the price which would be agreed upon between two independent parties.</p>	<p>Austrian Transfer Pricing Guidelines 2010 Section 6 paragraph 6 of the Austrian Income Tax Act</p>

Cost Contribution Agreements

18	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Austrian Transfer Pricing Guidelines 2010, para 112-128
		<p>A CCA participant must have a reasonable expectation of being able to benefit from the objectives of the CCA activity. The shared contributions are deemed to be original expenses of the CCA participants. They may exploit the benefits of the CCA without paying additional consideration to any party for such benefits.</p>	

Transfer Pricing Documentation

19	Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <p><i>If affirmative, please check all that apply:</i></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 type="checkbox"/> Other (specify):	Section 3 of Austrian Transfer Pricing Documentation Act
20	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	<p>Master File/Local Filing:</p> <ul style="list-style-type: none"> - Threshold: if the revenues of a Constituent Entity of an MNE Group exceeded the amount of EUR 50 million during the two preceding fiscal years. Moreover, any Constituent Entity of an MNE Group resident in Austria shall be required to submit a Master File upon request of the Competent Tax Office if, under the rules of any other country or jurisdiction, preparation of a Master File by any Constituent Entity resident there is required. - Timing: submission to the Competent Tax Office upon its request within 30 days from the date of filing of the corporate tax return / the tax return, where income is assessed. - Language: documentation must be submitted in an official language permitted in tax proceedings or in English. 	

		Country-by-country Reporting: - Requirements are fully in line with the Action 13 minimum standard and the respective EU Directive.	
21	Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Master File/Local Filing: - The Austrian Federal Fiscal Code provides for the compulsory enforcement of legal obligations by tax authorities. According to that general provision each “penalty” must not exceed EUR 5 000. Country-by-country Reporting: - In addition to the general rule of para 1 Section 111 of the Austrian Federal Fiscal Code Section 49a of the Austrian Financial Criminal Code provides for the following penalties in case of violation of the obligation to transmit the CbC Report (i.e.: late/no or incorrect filing): deliberate violation → fine up to EUR 50 000 grossly negligent violation → fine up to EUR 25 000	Para 1 of Section 111 of the Austrian Federal Fiscal Code Section 49a of the Austrian Financial Criminal Code
22	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	Master File/Local Filing: - The only exemption from transfer pricing documentation is the one for Constituent Entities of an MNE Group that do not reach the respective threshold (see under 20). Country-by-country Reporting: - Requirements are fully in line with the Action 13 minimum standard and the respective EU Directive → no further exemptions.	Para 1 of Section 3 the Austrian Transfer Pricing Act
Administrative Approaches to Avoiding and Resolving Disputes			
23	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	Please check those that apply: <input checked="" type="checkbox"/> Rulings <input checked="" type="checkbox"/> Enhanced engagement programs <input checked="" type="checkbox"/> Advance Pricing Agreements (APA) <input checked="" type="checkbox"/> Unilateral APAs <input checked="" type="checkbox"/> Bilateral APAs	Section 118 of the Austrian Federal Fiscal Code DTAs EU Tax Arbitration Convention

		<input checked="" type="checkbox"/> Multilateral APAs <input checked="" type="checkbox"/> Mutual Agreement Procedures <input type="checkbox"/> Other (<i>please specify</i>):	
Safe Harbours and Other Simplification Measures			
24	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	
25	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	No.	
Other Legislative Aspects or Administrative Procedures			
26	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Austrian Transfer Pricing Guidelines 2010, para 33
		Usually year-end adjustments are not regarded as arm's length. Year-end adjustments are only accepted, if such practice would have been agreed between two independent parties.	
27	Does your jurisdiction make secondary adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Austrian Transfer Pricing Guidelines 2010, para 5 Austrian Transfer Pricing Guidelines 2010, para 5 et seq.
		According to the Austrian Transfer Pricing Guidelines 2010, para 5 and Art 9 paragraph 2 of the OECD-Model Convention is solely of a clarifying character. Secondary adjustments are only made, if there is evidence that the Austrian transfer prices are not in line with the arm's length principle.	

Other Relevant Information

28	Other legislative aspects or administrative procedures regarding transfer pricing		
29	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>)		