

Germany publishes new draft legislation on transfer pricing documentation

The German Federal Ministry of Finance recently published draft amendments to the transfer pricing documentation decree ("GAufzV" from its German acronym). The transfer pricing documentation decree specifies what information must be included in a taxpayer's transfer pricing documentation report, and as a decree-law, is binding on taxpayers and the tax authorities. The revised documentation decree – if it is enacted in the proposed form – would apply to all tax assessment periods from 2017 onwards.

The changes to the transfer pricing documentation decree are motivated by the German government's desire to implement BEPS Action 13, incorporated into Chapter V of the OECD's *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*. However, as outlined below, the German Ministry of Finance includes provisions in the draft transfer pricing documentation decree that go beyond the OECD guidance.

Overview

The proposed draft transfer pricing documentation decree corresponds primarily to the OECD guidance defining the relevant information to be included in the master file and the local file. However, it also includes the following special requirements:

- A requirement to name the person who actually made the decisions regarding the intercompany transaction in question (Sec. 4 para. 1 no. 3 (b), draft TP documentation decree);
- A requirement to present the information that was available at the time when the transfer price was determined (Sec. 4 para. 1 no. 4 (b), draft TP documentation decree);
- A requirement that tax auditors must be provided access to any databases the taxpayer or its advisors used for a benchmarking analysis. Specifically, access must be provided to the version of the database used by the taxpayer/advisor at the time when the search was conducted. (Sec. 4 para. 3, draft TP documentation decree); and
- A requirement to support the weighting of allocation factors with quantitative data when applying the profit split method or a contribution analysis. (Sec. 1 para. 3 sent. 4, draft TP documentation decree).

The draft decree also limits taxpayers' ability to submit documentation such as the master file in languages other than German, by requiring a separate request by the taxpayer and approval by the tax authorities. This position contravenes the OECD's consensus position on the possibility of submitting the master file in commonly used languages, such as English.

Outlook

The draft transfer pricing documentation decree is expected to be promptly forwarded to the federal government for further discussion. Given that the proposed changes are intended to be effective for the 2017 assessment period, as well as the forthcoming German elections in the fall of 2017, the changes to the TP documentation decree may be finalized and adopted before the summer legislative break.

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