

dhpg

Preparing Transfer Pricing Documentation in Germany



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Does your Company need to prepare Transfer Pricing Documentation?

If so, this brochure gives you an initial overview of the main topics.

The importance and magnitude of preparing proper Transfer Pricing Documentation is frequently underestimated by small to medium-sized group companies. Many foreign investors are familiar with Transfer Pricing regulations in their country of origin but naturally lack information on the domestic regulations in Germany. As a consequence, these investors pay little to no attention to Transfer Pricing compliance. Our experience has shown that this may lead to enormous tax consequences and penalty payments in Germany.

Find out whether your company is required to prepare formal Transfer Pricing Documentation in Germany. If so, please don't take this issue lightly. Transfer Pricing has been at the heart of German tax audits for many years and will continue to be in times of increasing requirements, which are being raised even further by the OECD/G20 initiative on Base Erosion and Profit Shifting (BEPS).

For any questions you may have, don't hesitate to contact us.

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Is your company affected?

Group companies with cross-border business relations to other group companies, permanent establishments or other affiliated entities (i.e. controlling relationship or identity of interests) are required by German tax law to prepare Transfer Pricing Documentation for all intercompany transactions. Transactions that have taken place in business years starting after 1st January 2017 have to be documented according to the recommendations of the OECD as follows

Group specifics have to be covered by a **Master File** (turnover with affiliated/third-parties of more than EUR 100 million)

Download files here:



The specifics of the German operations in a **Local File**.



Groups of companies with consolidated worldwide turnover over EUR 750 million also need to prepare a **Country-by-Country Report**.



According to German law, all deliveries and services between affiliated companies need to be documented properly.

A formal Transfer Pricing study is **not required**

- if your company's total turnover with affiliated parties for the supply of goods does not exceed **EUR 6 million** in the previous fiscal year and
- where the total turnover with related parties for services excluding the supply of goods does not exceed **EUR 600,000.00** in the previous fiscal year.

If your company exceeds this volume it is advisable to prepare formal Transfer Pricing Documentation (Local File) as soon as possible. The resident entity receives a 60 days grace period for preparing all relevant documents for ordinary business transactions starting with the official request by the German authorities. However, our experience shows that in most cases this deadline is difficult to meet, especially without support from external advisers. The grace period for the provision of Transfer Pricing Documentation of extraordinary business transactions is even reduced to only 30 days. In cases of late filing the German tax authorities may impose a penalty of at least EUR 100 for each day of delay.

Another disadvantage of poorly prepared or incomplete Transfer Pricing Documentation is that the auditor may reject it on the grounds that it is deemed unusable and estimate the transfer price at what it believes to be at arm's length instead. It is assumed that the income of the German entity, which is subject to domestic taxes, is higher than what has been declared in its tax filings. In estimating the "arm's length" price, the tax inspector is authorised to exhaust the applicable price range derived from official and/or restricted databases available to the German authorities. Furthermore, the tax authority is entitled to apply a surcharge of up to 10 per cent of the surplus of the estimated income (at least EUR 5,000.00).

Relevant parts of proper Transfer Pricing Documentation

In order to avoid the shift of the burden of proof, the resident company needs to prepare formal Transfer Pricing Documentation in accordance with Germany’s comprehensive legislation. The formal requirements under German law are fairly detailed and complex. A full description would go beyond the scope of this paper. However, for an overview of the relevant parts, please refer to the following chart:

Facts & Circumstances				Arm’s Length Price	
Group Chart, Company Chart and Description as well as an Outline of the Group Strategy		Description of the Sector and the Competitors in the market of the individual Transaction		Transfer Pricing Method including the price setting	
Corporate Background	Transaction Analysis	Market & Competition	F&R Profile	TP Method	Financial Analysis
	Reasonable Grouping of relevant Transactions as well as a Description of the individual intercompany transactions		Description of Functions, Risks and Assets allocated to the Transaction Partners and the individual transaction		Justification of the Transfer Price
Group Specifics			Company Specifics		

Please note that the chart is not exhaustive and may not cover each individual case. It cannot substitute proper tax advice. Particularly in the case of extraordinary transactions, the taxpaying entity is obliged to prepare documentation within a six-month period after the end of the year in which the transactions have taken place.

Always prepare supporting documents to your Transfer Pricing Documentation substantiating your arm's length Transfer Price. This may include proper intercompany agreements, relevant correspondence, invoices and receipts.

The German tax authorities may challenge the outcome of a Transfer Pricing system even though it is at arm's length if the parties are not able to prove that, before carrying out the respective transactions, they have agreed on an adequate price. Therefore, we strongly recommend concluding written intercompany agreements before the transactions take place in order to be able to demonstrate that the transfer prices have been set in advance.

Given that German tax authorities challenge and adjust transfer prices paid or received by a German entity and domestic litigation is not successful, the result is a double taxation of a single profit. Accord-

ing to the majority of the double taxation agreements (DTA) Germany has concluded, a bilateral mutual agreement procedure (MAP) is the suitable instrument to eliminate the effects of double taxation. In order to be prepared for a MAP, a consistent documentation framework for the entire multinational group is crucial. Therefore the group's Transfer Pricing policies have to be considered when preparing the documentation of the German entity.

Please do not hesitate to contact our tax team or your regular contact at dhpg if you need assistance with the preparation of your Transfer Pricing Documentation or if you have any other questions. Our team of tax specialists has vast experience in advising our clients on international tax and transfer pricing matters as well as in documenting intra-group transactions.

Who we are – nationally and internationally

Good to know you can rely on more than 800 experts in Germany and 11.000 around the globe.

dhpg is one of the leading, medium-sized consultancies in Germany specialised in the core fields of audits, tax consultancy, legal advice, insolvency management and restructuring advice. The owner-managed company is one of the 15 largest in its sector with over 800 staff at 17 different locations. dhpg is part of CLA Global Limited (CLA Global), an international network of independent accounting and advisory firms with 11,000 employees representing over 10,000 clients in more than 100 countries. The network ranks 15th among the world's top 25 audit and advisory networks by sales.

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Our team of experts

If you wish to find out more about any of the issues in this publication, please get in touch with our experts



Benno Lange

is an auditor, tax consultant and senior partner at dhpg. He focuses on all issues of corporate and balance sheet tax law. He supports family-run companies in their growth efforts at home and abroad and has special expertise in providing tax advice on transfer pricing issues.



Philip Niedermayer

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Nadine Sinderhauf

is a tax consultant and partner at dhpg. Her main focus is on advising on all issues of corporate and international tax law. Specialised on advising on transfer pricing up to and including the preparation of transfer pricing documentation.



Ignacio Creus Martí

is a manager at dhpg. He advises on all issues of corporate and international tax law. He focuses on transfer pricing and international taxes for clients from various industries.

Consulting with the personal touch

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Further details about our locations can be found at [locations.dhpg.de](https://www.dhpg.de/locations)

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