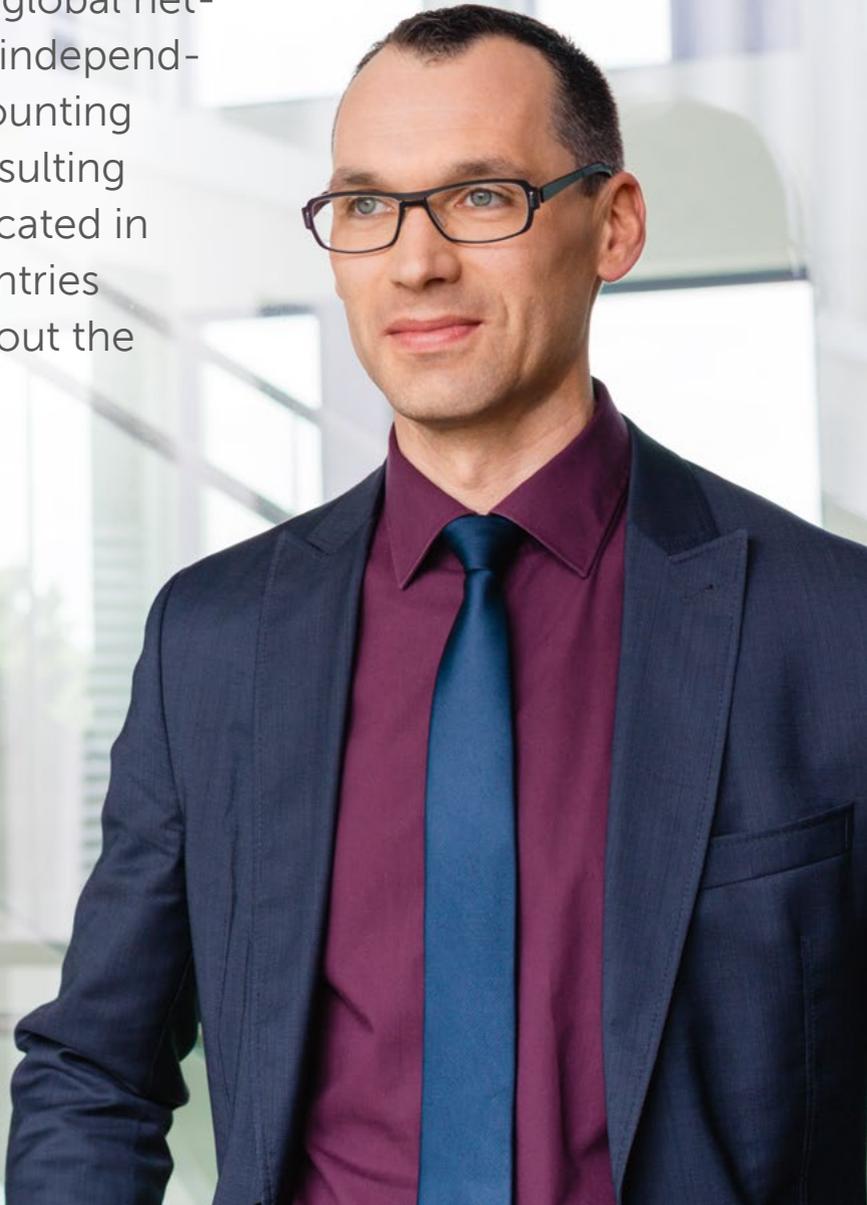


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# Preparing Transfer Pricing Documentation in Germany

“As a member of Nexia International, dhpg is part of a leading, global network of independent accounting and consulting firms, located in 122 countries throughout the world.”



# Does your Company need to prepare Transfer Pricing Documentation?

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

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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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## Contents

<b>4</b>	Transfer Pricing Documentation	<b>9</b>	Services
<b>8</b>	Who we are?	<b>10</b>	Team
		<b>11</b>	Contact

# 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	
<b>Corporate Background</b>	<b>Transaction Analysis</b>	<b>Market &amp; Competition</b>	<b>F&amp;R Profile</b>	<b>TP Method</b>	<b>Financial Analysis</b>
	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
<b>Group Specifics</b>			<b>Company Specifics</b>		

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 600 experts in Germany and 36,000 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 sec-

tor with over 600 staff at ten different locations. dhpg is part of the Nexia-Network, which is among the top 10 international consultancy networks with over 36,000 associates in 122 countries and sales of USD 4,3 billion.



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Auditing

Tax advice

Accounting

Legal counsel and  
advice

Insolvencies and  
restructuring

Advisory services

Wealth and  
corporate succession

IT services

# 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** Partner

Specialised in establishing and adapting Transfer Pricing models for multinational groups and supply-chain restructuring, operational Transfer Pricing



**Philip Niedermayer** Partner

Specialised in developing and implementing Transfer Pricing strategies in accordance with the relevant German tax guidelines and business requirements



**Thomas Rohler** Partner

Specialised in Transfer Pricing determination and documentation in case of relocation of functions, valuation of intangible assets, financial planning



**Dr. Heinrich J. Watermeyer** Partner

Specialised in litigation, Mutual Agreement Procedures (MAP) and Advanced Pricing Agreements (APA); preparation of intra-group contracts



**Dirk Roßmann** Partner

Specialised in Country-by-Country Reporting, Transfer Pricing Documentation (including benchmark studies) and profit determination of permanent establishments

# Consulting with the personal touch

## dhpg offices

### Bornheim

Adenauerallee 45–49  
53332 Bornheim  
P +49 2222 7007 0  
F +49 2222 7007 199  
E bornheim@dhpg.de

### Gummersbach

Bunsenstrasse 10a  
51647 Gummersbach  
P +49 2261 8195 0  
F +49 2261 8195 199  
E gummersbach@dhpg.de

### Bonn

Marie-Kahle-Allee 2  
53113 Bonn  
P +49 228 81000 0  
F +49 228 81000 20  
E bonn@dhpg.de

### Cologne

Erna-Scheffler-Straße 3  
51103 Köln  
P +49 221 33636 0  
F +49 221 33636 36  
E koeln@dhpg.de

### Mönchengladbach

Enscheder Straße 9  
41069 Mönchengladbach  
T +49 2161 27752 22  
F +49 2161 27752 23  
E moenchengladbach@dhpg.de

### Aachen

Adalbertsteinweg 34  
52070 Aachen  
P +49 241 8874783 0  
F +49 241 8874783 20  
E aachen@dhpg.de

### Euskirchen

Carmanstrasse 48  
53879 Euskirchen  
P +49 2251 7009 0  
F +49 2251 7009 50  
E euskirchen@dhpg.de

### Trier

Simeonstiftplatz 1  
54290 Trier  
P +49 651 2006853 0  
F +49 651 2006853 60  
E trier@dhpg.de

### Berlin

Jean-Monnet-Strasse 2  
10557 Berlin  
P +49 30 203015 0  
F +49 30 203015 20  
E berlin@dhpg.de

### Frankfurt am Main

Lurgiallee 16  
60439 Frankfurt am Main  
P +49 69 57005 0  
F +49 69 57005 190  
E frankfurt@dhpg.de

### Wiesbaden

Kreuzberger Ring 7a  
65205 Wiesbaden  
P +49 611 99930 0  
F +49 611 99930 30  
E wiesbaden@dhpg.de

## National and international cooperation

**Nexia Deutschland GmbH**  
www.nexia.de

**Nexia International**  
www.nexia.com



## **Imprint**

### **Editor**

dhpg

Marie-Kahle-Allee 2

53113 Bonn

**P** +49 228 81000 0

**F** +49 228 81000 20

**E** [info@dhpg.de](mailto:info@dhpg.de)

### **Design**

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Bernd Roselieb ([www.bernd-roselieb.com](http://www.bernd-roselieb.com))