



Austria plans introduction of standardized transfer pricing documentation

Global Transfer Pricing Alert 2016-018

Austria's tax authorities on May 9 issued the long-awaited draft Transfer Pricing Documentation Act, which introduces obligatory standardized transfer pricing documentation requirements. The draft legislation is based on the OECD's three-tiered standardized approach to transfer pricing documentation, and imposes penalties for failure to comply with country-by-country (CbC) reporting obligations. The review period of the draft TP documentation act ended on May 31, but it has yet to be approved by the national assembly.

Implementing BEPS action 13

In the course of the base erosion and profit shifting (BEPS) project, the OECD introduced extensive changes to existing transfer pricing documentation processes, such as the master file and local file concepts, and created an additional documentation element with the CbC report. Austria will follow the OECD guidance and implement the requirement to prepare a CbC report. The requirement will apply to fiscal years starting on or after January 1, 2016. At the same time, the preparation of the transfer pricing documentation will be mandatory and the master file concept is considered a standardized approach.

Standardization

Once the draft act becomes law, the transfer pricing documentation requirements will be a standardized process for the majority of Austrian companies that are members of multinational groups. Therefore, the preparation of a master file and a local file will be mandatory. Details on the content of those files will be provided by decree, but it may be assumed that they will largely correspond to those proposed in the OECD guidance.

Submission deadline

Companies should start preparing to comply with the documentation requirements for fiscal year 2016. Although the transfer pricing documentation reports do not have to be filed together with the tax return, the master file and the local file must be submitted upon request by the tax authorities within 30 days after filing the corporate income tax return. Given the extensive scope of information that needs to be prepared, an early kick-off for documentation projects is advisable.

Language

Transfer pricing documentation generally must be filed in an official language accepted by the tax authorities (de facto, German), but the authorities may make an exception and allow

documentation to be filed in English to meet the 30-day submission deadline. However, the tax authorities may subsequently request an officially certified translation.

CbC Report

According to the Transfer Pricing Documentation Act, and in line with the OECD guidance, an Austrian resident ultimate parent company must submit a CbC report to the competent tax authority. In addition, an Austrian entity must assume the responsibility to submit the CbC report in exceptional cases even though it is not the ultimate parent company. A similar legislative requirement has been implemented in other countries to ensure the exchange of CbC information between the countries listed in the report, even if the exchange of information with the ultimate parent company's jurisdiction cannot be made legally or factually.

If the ultimate parent company is resident in Austria, the CbC report must be filed for fiscal years starting on or after January 1, 2016. In the case of an Austrian entity assuming the filing responsibility for the foreign ultimate parent company, the CbC report may be submitted for fiscal years starting on or after January 1, 2017. The deadline for electronic submission of CbC reports via "FinanzOnline" is 12 months after the last day of the relevant fiscal year. An ultimate parent company resident in Austria will therefore have to file the CbC report on December 31, 2017, at the latest, provided the fiscal year concurs with the calendar year.

Exceptions

As expected, a threshold for filing a CbC report has been implemented in the amount of EUR 750 million of consolidated group revenue. If the threshold was not exceeded in the preceding fiscal year, the multinational group does not have to prepare CbC documentation in Austria. Regarding the standardized requirements for documentation (i.e., preparation and submission of master file and local file), a member of an international group of companies resident in Austria that generated revenues in the preceding fiscal year below EUR 50 million is exempt from these documentation requirements. However, this threshold can be disregarded if commission revenues generated from foreign affiliated entities amounted to more than EUR 5 million in the preceding year. According to the explanatory notes, this threshold will be introduced to include commissionaire and agent structures, in which revenues are limited to commissions. Regardless of any thresholds, the competent tax authority can request the master file if the ultimate parent company is required to prepare master file documentation according to local legislation. Smaller companies must provide documents to the tax authorities upon request based on general documentation requirements to justify their intercompany pricing.

Penalties

The draft legislation provides for penalties if the CbC report is not filed within the prescribed period, or if data to be submitted is missing or incorrect. Subject to the intentional violation of those requirements, which constitutes a fiscal offense, the penalty can amount up to EUR 80,000. In the case of a grossly negligent violation of the above-mentioned requirements, the penalty can be a maximum of EUR 25,000. According to the explanatory notes to the draft legislation, the Austrian entity will not be fined if a complete and accurate submission of the documentation is not possible because the entity is missing the required information and lacks the legal means to acquire that information. Negligent submission of incorrect data will not be subject to penalties.

Comments

The Transfer Pricing Documentation Act is based on the recommendations of the OECD BEPS project and de facto provides for documentation requirements for all Austrian companies that conduct cross-border intercompany transactions. Even though the legislation has not been finalized, enough information regarding thresholds and contents is provided in the draft so that companies that may be affected by the documentation requirements may start the process of preparing the required documentation.

Contacts

Andrea Lahodny
(Vienna)
Deloitte Austria
alahodny@deloitte.at

Gabriele Holzinger
(Vienna)
Deloitte Austria
gholzinger@deloitte.at

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