



New regulations with regard to the submission of transfer pricing documentation for tax audits

November 2024

On September 26, 2024, the German Bundestag (Upper Chamber) passed the Fourth Bureaucracy Relief Act ("BEG IV"). A key aspect of the law concerns, among other things, the transfer pricing documentation and its submission during tax audits:

New local file structure

The law initially provides for a subdivision of the transfer pricing documentation in accordance with Section 90 (3) AO (General Tax Code) in its new version: In future, the country-specific, company-related documentation ("Local File") must therefore be broken down into the following parts:

- Overview of business transactions (transaction matrix),
- Presentation of business transactions (factual documentation) and
- Presentation of the economic and legal basis with regard to the accordance with the arm's length principle (arm's length documentation).

Shortened submission deadline of 30 days

Moreover, from 1 January 2025, the shortened submission deadline of 30 days applies from the date of notification of the tax audit order; accordingly, only the following documents must be submitted to the tax auditor:

- the transaction matrix,
- the master documentation of the multinational group ("Masterfile") and
- records of so-called extraordinary business transactions (i.e. intra-group transactions which do not belong to the daily business).

Scope of the transaction matrix

The specific requirements for the above mentioned and newly introduced *transaction matrix* are to be specified in a revised version of the Gewinnabgrenzungsaufzeichnungs-Verordnung ("GAufzV"), the German documentation decree law. Based on the explanatory memorandum to the law, it can be assumed that the following information must be provided in connection with the transaction matrix:

- the subject matter and nature of the transactions,
- the parties involved in the transactions, identifying the recipient and provider of the service,
- the volume and consideration of the transactions,

- the contractual basis,
- the transfer pricing method applied,
- the tax jurisdictions concerned and
- information on whether the transactions are not subject to regular taxation in the relevant tax jurisdiction.

If the transaction matrix is not submitted, a penalty of EUR 5,000 must be imposed in accordance with the Section 162 (4) sentence 1 AO. The penalty increases to 5%-10% of any income adjustment that might be imposed in connection with the transactions not properly documented.

Other parts of the transfer pricing documentation

The other parts of the documentation (or the complete transfer pricing documentation report) must only be submitted at the separate request of the tax auditor within 30 days of that separate request.

In practice, however, it should be noted that a requirement for full transfer pricing documentation remains in place at all times. This request can be therefore e.g. be made both together with the audit request itself and/or in the further course of the ongoing tax audit.

Practical implications

If the full transfer pricing documentation is only requested in the further course of the tax audit, MNEs may benefit from that time advantage, as this gives taxpayers an "additional" period of 30 days to prepare the documentation of transaction related facts, arm's length testing as well as functional and risk analysis.

However, the taxpayer does not have a "right" to this procedure, meaning that the tax auditor can also request the full transfer pricing documentation already at the start of the tax audit.

It is therefore highly advisable to have complete transfer pricing documentation available already at the beginning of the tax audit, as otherwise cooperation delay penalties may be imposed on the audited taxpayer.