

Tax Short Cuts

Current tax information
for Austria by EY

Transfer Pricing Guidelines 2021 (ATPG 2021) - Maintenance Decree 2024

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On 14 June 2024, the Federal Ministry of Finance (BMF) sent out the draft of the ATPG 2021 - Maintenance Decree 2024 for consultation. The consultation period ends on 15 July 2024.

The decree amends the ATPG 2021 based on the publication of the OECD Transfer Pricing Guidelines (OECD TPG) 2022 and based on ongoing maintenance.

Among several updates of references to the OECD TPG and clarifications incorporated, we would like to highlight those topics that we consider to be of relevance for the future transfer pricing practice.

Contract Research and Development Services

In paragraph 42 it is to be supplemented that generally no profit mark-up should be applied to costs that do not contribute to the original value creation process, represent costs for mediated services, or are pass-through costs. At the same time, an example related to contract research and development services has been added, suggesting that contract research and development service providers in the pharmaceutical industry should apply a profit mark-up on the expenses for clinical studies (depending on the functional and risk analysis).

In paragraph 148 it is to be clarified that the application of the cost-plus method in connection with contract research services may not be appropriate if the principal does not have the necessary skilled technical personnel to carry out, design and monitor the research and development services.

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Regarding location savings, in paragraph 199 it is to be stated that the transfer of benefits from the Austrian research premium through price reductions or reduction of the costs passed on by the contract research and development service providers to its intra-group principal may generally not be appropriate.

Cash Pooling

In paragraph 123, an example is to be included related to a cash pool. In the example, deposits in the cash pool exceed the short-term investment amounts needed. The "current ratio" (current assets in relation to short-term liabilities) is used for the assessment. According to the example, the part exceeding the short-term investment amounts needed may need to be reclassified to a long-term financing transaction and should be remunerated at arm's length.

Group Restructurings

In connection with group restructurings, it should be noted, among others, that restructuring or closure costs are not to be borne by the affected company if there are options realistically available as an alternative to the reorganization or if the affected company has a reduced functional and risk profile (paragraph 185a).

Location Savings, especially COVID-19 Subsidies

In paragraph 199b it is to be stated in connection with government grants or emergency aid (such as COVID-19 subsidies) that a transfer of these to other group companies via the transfer price is generally excluded.

It remains to be seen which adaptations will be made based on the suggestions during the consultation process.

The ATPG 2021 - Maintenance Decree 2024 can be found via following link:
<https://www.bmf.gv.at/dam/jcr:e3dc9ad3-4c45-4428-99ef-b3c0cfd9bcbe/VPR%202021%20%E2%80%93%20Wartungserlass%202024.pdf>

OECD publishes list of "Amount B countries"

Transfer Pricing

Following the OECD's final report on "Pillar One - Amount B" dated 19 February 2024 (refer to our Tax Short Cuts 05/2024 from 5 March 2024), the list of "Amount B countries" (formerly known as "low capacity-countries") was published on 17 June 2024.

The Amount B approach pursues the goal of a simplified and streamlined application of the arm's length principle through OECD-wide predetermined EBIT margins for intra-group wholesale entities (distribution companies, sales agents and commissionaires) engaged in baseline activities in the area of marketing and distribution (explicitly excluding: sales to end customers, sales of digital goods, commodities or services), regardless of the size of the company or corporate group, and will be applicable for the first time for fiscal years starting on or after 1 January 2025.

OECD publishes list of "Amount B countries"

In relation to "Amount B countries" the partner state is obligated to accept the application of Amount B or to take all reasonable steps to eliminate double taxation. The list published by the OECD includes the following countries:

▶ Albania	▶ Egypt	▶ Nigeria
▶ Angola	▶ Eswatini	▶ North Macedonia
▶ Argentina	▶ Fiji	▶ Pakistan
▶ Armenia	▶ Gabon	▶ Papua New Guinea
▶ Azerbaijan	▶ Georgia	▶ Paraguay
▶ Belarus	▶ Grenada	▶ Peru
▶ Belize	▶ Haiti	▶ Philippines
▶ Benin	▶ Honduras	▶ St Luca
▶ Bosnia and Herzegovina	▶ Jamaica	▶ St Vincent and the Grenadines
▶ Botswana	▶ Jordan	▶ Samoa
▶ Brazil	▶ Kazakhstan	▶ Zambia
▶ Burkina Faso	▶ Kenya	▶ Senegal
▶ Cape Verde	▶ Liberia	▶ Serbia
▶ Cameroon	▶ Malaysia	▶ Sierra Leone
▶ Republic of Congo	▶ Maldives	▶ South Africa
▶ Costa Rica	▶ Mauritius	▶ Sri Lanka
▶ Ivory Coast	▶ Mexico	▶ Thailand
▶ Democratic Republic of the Congo	▶ Moldova	▶ Togo
▶ Djibouti	▶ Mongolia	▶ Tunisia
▶ Dominica	▶ Montenegro	▶ Ukraine
▶ Dominican Republic	▶ Morocco	▶ Uzbekistan
	▶ Namibia	▶ Vietnam

It remains to be seen how (voluntarily or mandatorily) or whether the various states will implement the Amount B concept.

EY's transfer pricing experts are happy to provide assistance regarding an analysis of the expected impacts on intra-group distribution companies, calculations and structurings.

The "Amount B countries" can be found via following link:

<https://www.oecd.org/tax/beps/statement-covered-jurisdiction-definition-inclusive-framework-commitment-amount-b.pdf>

MoF: Countries with automatic exchange of information on financial accounts

Common Reporting Standard Act

On 30 May 2024, the Federal Ministry of Finance (MoF) published a list of all countries and territories that are considered participating countries for the automatic exchange of information on financial accounts (2024-0.398.016) in accordance with Sec 91 of the Common Reporting Standard Act (Gemeinsamer Meldestandard-Gesetz).

MoF: Countries with automatic exchange of information on financial accounts

Participating countries are all member states of the EU and countries and territories listed in Sec 1 of the Decree 124/2024 as well as those countries and territories with which the EU has concluded separate agreements on the exchange of financial account information and which are included in a list published by the EU Commission.

What is new compared to the MoF information dated 21 June 2023 (2023-0.415.373) is, that for the 2023 reporting period the following countries are not considered participating countries: Georgia, Liberia, Morocco, Moldova, Montenegro, Uganda and Ukraine.

There is an automatic exchange of information on financial accounts with the following countries and territories for the 2024 reporting period:

Albania, Andorra, Anguilla, Antigua and Barbuda, Argentina, Aruba, Azerbaijan, Australia, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda, Brazil, British Virgin Islands, Brunei Darussalam, Bulgaria, Cayman Islands, Chile, China, Cook Islands, Costa Rica, Curaçao, Dominica, Ecuador, Denmark, Germany, Estonia, Faroe Islands, Finland, France, Ghana, Gibraltar, Grenada, Greece, Greenland, Guernsey, Hong Kong, India, Indonesia, Ireland, Iceland, Israel, Isle of Man, Italy, Jamaica, Japan, Jersey, Canada, Kazakhstan, Qatar, Kenya, Colombia, Korea (Republic of), Croatia, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau, Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Monaco, Montserrat, Nauru, New Caledonia, New Zealand, Netherlands, Nigeria, Niue, Norway, Oman, Pakistan, Panama, Peru, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Sweden, Switzerland, Seychelles, Singapore, Sint Maarten, Slovakia, Slovenia, South Africa, Spain, Thailand, Czechia, Türkiye, Turks and Caicos Islands, Hungary, Uruguay, Vanuatu, United Arab Emirates, United Kingdom and Cyprus.

As of 23 March 2022 the exchange of information with Russia is suspended on the basis of the Convention on Mutual Administrative Assistance in Tax Matters.

The MoF information is available under the following link (German version only): <https://findok.bmf.gv.at/findok/resources/pdf/a9ff2833-f71e-4abe-ae10-08eac32153bc/82864.1.1.pdf>

Directive on upper limits regarding COVID-19 subsidies published in the Federal Law Gazette

The directive on the reclassification of COFAG subsidies exceeding the upper limits as compensation for losses, for damages or de minimis aid (Obergrenzenrichtlinien) were published in the Federal Law Gazette II No. 160/2024 on 19 June 2024.

Directive on upper limits regarding COVID-19 subsidies published in the Federal Law Gazette

If the upper limits according to EU requirements for the total subsidies granted in a company group are exceeded or if the aid applied for would be granted in excess of the upper limit, reclassification as compensation for losses, for damages or de minimis aid in accordance with points 4 to 7 of the directive on upper limits can be applied for (reclassification application).

According to the press release of the MoF dated 16 May 2024, all affected businesses will be contacted and will receive a link to submit an application. The deadline for applications is 31 October 2024; multiple applications are not permitted.

The directive is available under the following link (German version only):
https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2024_II_160/Anlage_n_0001_82333F76_F512_4EFA_9CB5_519E16C45B28.pdf

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