



# Austria: New transfer pricing rules enacted by the Austrian Parliament

*On July 14, 2016 the legislation introducing country-by-country reporting and formal transfer pricing documentation requirements in Austria has been accepted by the second chamber the Federal Council. This legislation constitutes a major change to the Austrian transfer pricing documentation rules. To date, Austrian law does not provide for specific statutory documentation requirements; rather, these rules are only stated in administrative guidelines. Before entering into force the law must be published in the Federal Law Gazette, however this is just a formal step. The law has been processed and approved at a rapid pace without any major changes being made to the draft text and is applicable for fiscal years starting on or after 1 January 2016. Read [TaxNewsFlash-Transfer Pricing](#)*

## Overview of the final Transfer Pricing documentation law

The new legislation follows the three-tier documentation approach contained in the OECD's final report on "Transfer Pricing Documentation and Country-by-Country Reporting" issued in October 2015. The new legislation, therefore, includes a requirement to prepare the following documents for fiscal years starting on or after 1 January 2016:

- Country-by-country report
- Master file
- Local file

## Country-by-country report

Austria is requiring Austrian parented multinational enterprises (MNEs) or a local subsidiary (described below) with a global consolidated group turnover of at least €750 million in the previous year to file a country-by-country ("CbC") report containing the information in Annex III of the OECD's BEPS Action 13 final recommendations.

In accordance with OECD recommendations, the CbC report will have to be filed with the tax authorities of the jurisdiction where the ultimate parent entity in the MNE group is a tax resident and then be automatically transmitted by that jurisdiction to each jurisdiction where the MNE group conducts business through applicable exchange of information provisions.

In general, the ultimate parent company of a MNE group will be required to file the CbC report. For determining the ultimate parent company, consolidation principles apply. However, in certain instances, the foreign ultimate parent company could also appoint

another foreign entity (see below) or an Austrian company or permanent establishment to file the report on behalf of the MNE group.

In instances when the ultimate parent company is not resident in Austria, the relevant Austrian tax office would have to nominate an Austrian entity (company or permanent establishment) to satisfy the CbC reporting obligation, if one of the following requirements is fulfilled:

- The ultimate parent company is not required to prepare a CbC report in its country of residence.
- There is no existing agreement regulating the exchange of information between Austria and the country of residence of the ultimate parent company.
- Due to a systemic failure in the country of residence, there is no possibility to receive the information.

In such instances, the relevant tax office would issue a notification and inform the Austrian entity of its filing obligation.

In addition, a foreign EU resident group entity can also subsume the obligations of an ultimate parent company for CbC reporting purposes. For non-EU resident group entities that shall subsume the CbC reporting, additional conditions must be fulfilled, amongst others that it is subject to CbC reporting under its domestic law, there is an exchange of information between its state of residence and Austria and no systemic failure exists and both the domestic and the Austrian tax administration were informed of the entry of this foreign entity into the obligation before reporting fiscal year end.

If none of these provisions is fulfilled the Austrian competent tax authority must require the Austrian resident legal entity to file the CbC report by notification. If not all necessary information can be gathered by this entity, it must inform the competent authority of this circumstance and, nevertheless, file the report with the information available.

#### Timing

The CbC report is due within 12 months after the year-end of the ultimate parent company. For instance, the CbC report for the fiscal year ending 31 December 2016 would be due by 31 December 2017. The CbC report would be filed electronically via FinanzOnline. Further details are expected to be provided by regulation. According to the law, each Austrian entity covered needs to inform the competent tax authority if it has to file a CbC report and if not who will file the report before the fiscal year end. Only if an Austrian resident legal entity is required by formal notification to fulfill the obligations of the CbC report, the report can be based on 2017 information.

## Master file, Local file

In general, all entities (including permanent establishments) belonging to a MNE group that are tax resident in Austria are to prepare a Master file and a Local file. The Master file is to provide comprehensive information of the MNE group. In contrast to the Master file, the Local file is to provide detailed information on specific intercompany transactions including a comparability analysis.

The general contents of the Master file and the Local file are defined in the legislation, and will be further specified by future regulations issued by the Ministry of Finance (“MoF”). The draft regulation available on the MoF homepage shows that the information to be presented in the Master file and Local file would be in line with the new OECD standard and reflect the information specified in Annex I and II of the OECD’s BEPS Action 13 final recommendations.

#### KPMG observation

If both the law and the regulation will be enacted as drafted, the Austrian tax authorities will receive much more information on foreign aspects of the group activities, eg on restructurings, the group’s strategy concerning R&D, on group internal financing; all areas which have proved to be subject of disputes during tax audits already in the past. We also expect the tax authorities to gather and compare data received centrally.

#### Exclusion for small entities

Under the new legislation, an Austrian entity will only fall under the Master file/Local file documentation requirement if it has had a turnover exceeding €50 million in each of the two preceding years. For entities not exceeding this threshold, the documentation rules would remain unchanged, i.e., these entities would have to prepare transfer pricing documentation based on the administrative guidelines (but without the obligation to follow the formal requirements for preparing a separate Master file and Local file).

#### Timing

The Master file and Local file documentation are to be filed with the tax authorities within 30 days from the date of a request for these files from the tax authorities, a request that can only be made after the filing of the tax return for the relevant year.

## Other issues

**Language:** In general, the transfer pricing documentation is to be prepared in the German language. However, also English language files are accepted. No translation is required. If necessary, the MoF can issue a regulation for language issues relating to the CbC report.

**Penalties for non-compliance:** The legislation includes a maximum penalty of €50,000 if the CbC reporting requirements are not met. Compared to the draft law the penalty provision were deleted from the transfer pricing documentation law and included as a tax offense in the Austrian Criminal Tax Law. With respect to the Master file and the Local file, the Austrian draft legislation does not include any specific penalties. However, the general provisions of the Austrian Administrative Code and the Austrian Fiscal Penal Code apply.

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