

# Transfer Pricing

## Relevant documentation and the regime of proof

# Agenda



- 1 Introduction
  - 1.1 Regulatory framework
  - 1.2 Regime of proof
- 2 Transfer Pricing Documentation
  - 2.1 General principles / § 90 (3) German Fiscal Code
  - 2.2 Preparation of documentation
  - 2.3 Documentation of Arm's Length Principle
  - 2.4 Formal requirements
  - 2.5 Extraordinary business activities
- 3 EU-Master File

# 1 Introduction

## 1.1 Regulatory framework

Section 1  
Foreign Tax Act



General Arm's Length  
Principle

Section 90 (3)  
German Fiscal Code



German transfer pricing  
documentation  
requirements

Administrative law



Scope of the  
documentation  
requirements

# 1 Introduction

## 1.1 Regulatory framework



### Documentation obligations

- Duty to keep records:
  - Taxable persons
  - Permanent establishments
- Transactions:
  - Business transactions
  - Between related parties
  - In a cross-border-context
- Related parties:
  - 25 or more direct or indirect shareholding
  - Controlling influence
  - Other possibilities of exercising a controlling influence beyond the normal business relationship
  - Any personal interest of one party in the other party's income

# 1 Introduction

## 1.2 Regime of proof



- § 88 German Fiscal Code:
  - Investigation by tax authorities “ex officio”
  - Free consideration of evidence
- § 90 German Fiscal Code:
  - Cooperation duties of the tax payer (increase for cross-border transactions)
  - TP documentation to be handed in upon request of tax authorities, usually on the occasion of a tax audit
  - Shift of the burden of proof

## 2 Transfer Pricing Documentation

### 2.1 General principles / § 90 (3) German Fiscal Code

Interdisziplinäres Zentrum  
für Internationales Finanz-  
und Steuerwesen (IIFS)



#### Regular business activities

- „Regular“: goods and products, services, interest, intangible assets, allocation proceeds, assignment of employees
- On request of tax authorities (on the occasion of a tax audit)
- 60 days upon request
- Internal TP guideline can be used

#### Extraordinary business activities

- „Extraordinary“: e. g. business restructurings or the conclusion of cost-sharing agreements
- Immediate documentation
- 30 days upon request
- No TP guideline admissible, description of specific transaction required

## 2 Transfer Pricing Documentation

### 2.2 Preparation of documentation

#### (a) General Information

- Description of **Shareholder relations** between the taxpayer and the related entities with whom the taxpayer is engaged in business transactions
- Description of **other circumstances** that would qualify entities as related entities
- Description of the **organizational and operational structure** of the group (including permanent establishments and partnerships)
- Description of the general **activities** of the taxpayer (e.g. services, production and/or distribution of goods, research and development)

## 2 Transfer Pricing Documentation

### 2.2 Preparation of documentation

#### (b) Business transactions with related entities

- Description of the **business transactions with related entities**
  - type and extend of these business transactions (e.g. purchasing and sale of goods, services, loans, licenses, cost allocations)
  - Underlying agreements
- A list of all **significant intangibles** owned or used by the taxpayer for the purpose of transactions with related entities



## 2 Transfer Pricing Documentation

### 2.2 Preparation of documentation

#### (c) Function and risk analysis

- Information on the functions performed, risks borne and any changes thereto
- Information on the **significant intangibles** employed
- Information on the conditions of the **underlying agreements**
- Information on the **business strategies** and the important developments with respect to the relevant markets and competitors for both the taxpayer and the related entities
- Description of the **value chain** between the taxpayer and related entities

## 2 Transfer Pricing Documentation

### 2.2 Preparation of documentation

#### (d) Transfer Price Analysis

- Description of the **selected transfer pricing method**;
- **Reasons** why the selected transfer pricing method is appropriate;
- Records of the **calculations** performed in applying the selected transfer pricing method;
- Description of the comparability with **third party prices** and financial data of independent companies the taxpayer refers to in establishing transfer prices as well as records reflecting any **adjustments** made.

## 2 Transfer Pricing Documentation

### 2.2 Preparation of documentation

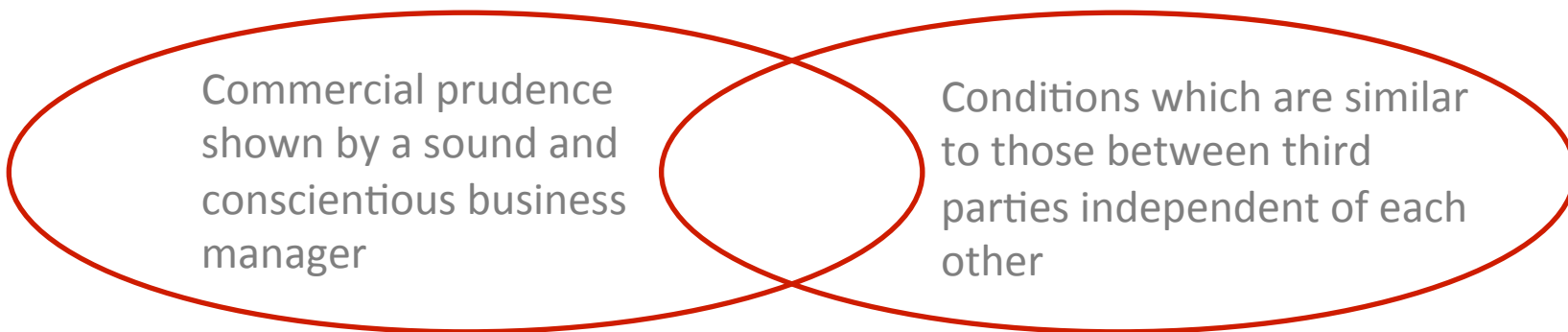
#### (e) Specific documentation duties

- In the event of specific conditions or circumstances appropriate documentation has to be prepared to explain these specific conditions or circumstances:
  - Change of business strategies
  - Cost contribution arrangements
  - Advance Pricing Agreements with foreign tax authorities
  - Price adjustments
  - Losses
  - Development and other research activities in case of change of function and risk

## 2 Transfer Pricing Documentation

### 2.3 Documentation of Arm's Length Principle

#### Aspects of the Arm's Length Principle



#### Transfer pricing methods:

- Comparable Uncontrolled Price Method
- Cost Plus Method
- Resale Minus Method
- Transaction Net Margin Method

## 2 Transfer Pricing Documentation

### 2.4.1 Formal requirements

- Transfer pricing documentation can be prepared in either **written** or **electronic** form.
- Documentation is regarded to be appropriate when an **independent expert** can comprehend which transactions have been realized and if the arm's length standard has been adhered to.
- Although documentation notes have to be prepared for each business transaction separately, an **aggregation** of transactions of a similar nature or value is **permissible**.
- **German** language is obligatory (unless another language is agreed by tax authorities upon request).

## 2 Transfer Pricing Documentation

### 2.4.2 Possible outline of TP study

Interdisziplinäres Zentrum  
für Internationales Finanz-  
und Steuerwesen (IIFS)



<b>Overview</b>	Legal and organizational structure, general description of business activities, products and services
<b>Analysis of industry and business</b>	Description of the business activities, the taxpayer's market share
<b>Function and risk analysis</b>	Allocation of functions and risk between different business unities or transactions
<b>Transactions</b>	Description of internal transactions
<b>Applicable regulations</b>	TP regulations of OECD and local countries
<b>Arm's Length and financial analysis</b>	Analysis of comparability of third party prices and financial data of independent companies
<b>Annex</b>	Group chart, internal contracts, arm's length analysis, annual reports

## 2 Transfer Pricing Documentation

### 2.5 Extraordinary business activities

- Immediate documentation, at the latest within 6 months after the end of the financial year in which the transaction has taken place
- Submission of document notes within 30 days upon request
- Documentation notes for the specific transaction required, not for group transactions
- Extraordinary business transactions:
  - Change of business strategy
  - Transfer of property
  - Change of risk structure
  - Transfer of functions
  - Important long-term agreements

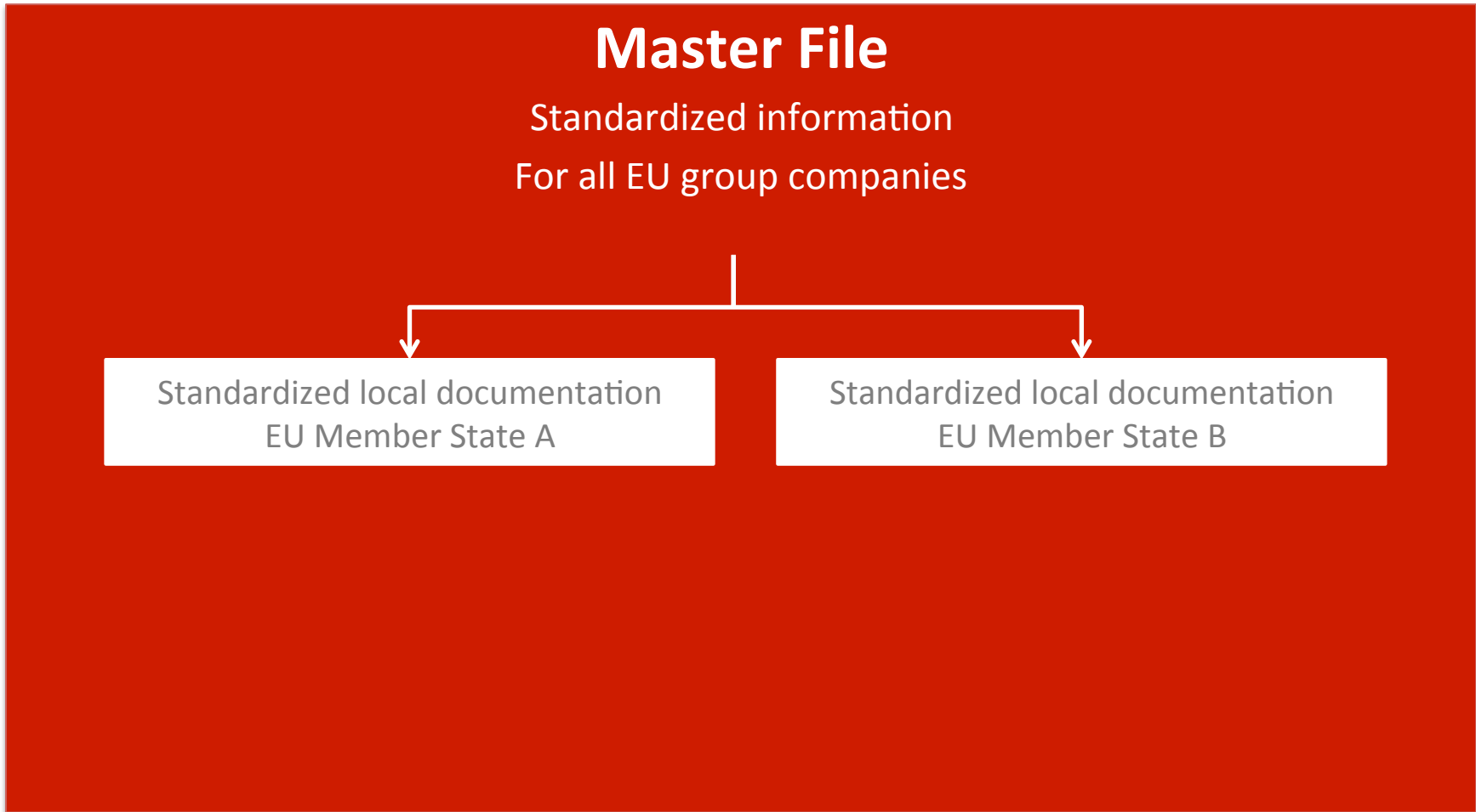
### 3 EU Master File

- 2001: EU Joint Transfer Pricing Forum
- Aimed at harmonizing TP regulations
- Reduction of group-wide documentation costs possible
- No binding concept through EU TPD (EU “soft law“)
- Local regulations in EU Member States on TP documentation should not exceed EU TPD regulations
- Generally accepted concept in Germany and already applied but in the end the view of the German fiscal authorities is finally decisive

=> Different local TP rules and interpretations persist



# 3 EU Master File



# Thank you for your Attention!

## Any Questions?