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Vorabverständigungsverfahren in Verrechnungspreisfällen (Advance Pricing Agreements) Durchführung

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Modul	Sachverhalt
Leistungsschlüssel	99102085058000
Leistungsbezeichnung I	Vorabverständigungsverfahren in Verrechnungspreisfällen (Advance Pricing Agreements) Durchführung
Leistungsbezeichnung II	Applying for a preliminary consultation procedure for cross-border matters
Typisierung	1 - Bund: Regelung und Vollzug
Quellredaktion	Bund
Freigabestatus Katalog	fachlich freigegeben (gold)
Freigabestatus Bibliothek	unbestimmter Freigabestatus
Begriffe im Kontext	
Leistungstyp	Leistungsobjekt mit Verrichtung
Leistungsgruppierung	
Verrichtungskennung	Durchführung (58)

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SDG-Informationsbereich	Sonstige Steuern: Zahlung, Sätze, Steuererklärungen
Lagen Portalverbund	Steuern und Abgaben für Betriebe (2040200)
Einheitlicher Ansprechpartner	Nein
Fachlich freigegeben am	03.08.2022
Fachlich freigegeben durch	Federal Ministry of Finance (BMF)
Handlungsgrundlage	https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-2017-full-version_g2g972ee-en#page8 https://www.gesetze-im-internet.de/ao_1977/_89a.html
Teaser	Are you affected by a cross-border situation and want to avoid potential double taxation? Then, under certain conditions, you can apply for a apply for an advance ruling procedure.
Volltext	<p>If, for example, economic goods or services are exchanged between different parts of a company, so-called transfer prices must be determined. If the exchange takes place internationally, the tax authorities of the countries involved can check the transfer prices and correct them if necessary. This can lead to double taxation. To avoid this, it makes sense to carry out a preliminary consultation procedure.</p> <p>With a pre-agreement procedure, countries agree in advance how, for example, transfer prices between internationally active and affiliated companies will be regulated. The states determine transfer pricing methods for the parts of the company within a certain period of time. The aims of the procedure are legal certainty and the avoidance of double taxation for the company. The authority responsible for the advance pricing procedure in Germany is the Federal Central Tax Office (BZSt).</p> <p>If you as a company would like to apply for the advance ruling procedure in a transfer pricing case, you must meet the following requirements:</p>

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- Your company is based in Germany or
- Your company has a permanent establishment in Germany and is based in a country with which Germany has concluded a double taxation agreement (DTA).

As a rule, you do not only have to submit the application in Germany through the part of the company concerned here. You should also submit an application to the competent authority abroad at the same time.

The advance mutual agreement procedure is not only possible for transfer pricing as an Advance Pricing Agreement (APA), but also for other cross-border situations. This is done as an Advance Mutual Agreement (AMA) if the other state agrees.

What types of advance agreement procedure are there?

You can use the advance mutual agreement procedure between Germany and

- another state (bilateral advance mutual agreement procedure), or
- several other countries (multilateral prior notification procedure)

apply.

If your case has already been the subject of a successfully completed and coordinated bilateral or multilateral tax audit (joint audit), you can submit your application at a reduced rate on the basis of the results of this tax audit.

If you are one or one of several taxpayers affected by a case, you must apply jointly for the advance ruling procedure. You then appoint a jointly authorized person who may receive all administrative acts and notifications.

How long is the advance ruling procedure valid for?

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The advance ruling procedure is forward-looking. The term therefore generally begins at the start of the financial year in which you submitted the application. The validity period should not exceed 5 years.

Under certain conditions, you can also apply for the retroactive inclusion of assessment periods that precede the requested term of your advance ruling procedure (roll back).

Is there a preliminary meeting?

You have the option of arranging a preliminary meeting (prefiling) at the BZSt. During the prefiling, you will discuss detailed information about the procedure, such as the required documents and the prospects of success of your application.

If your application is successfully examined and the negotiations between the countries are also successful, the countries involved will sign a preliminary agreement. This regulates how double taxation is to be avoided. However, it can only be implemented in Germany once you have agreed to its content and declared a waiver of appeal with regard to its correct implementation.

Erforderliche Unterlagen

Your informal application must contain the following information:

- the exact name of the person making the application and all other associated companies, permanent establishments or employers involved.
- the name of the locally competent tax authority and your tax number
- the tax identification number or the business identification number
- the contracting states concerned
- an explanation of why there is a risk of double taxation
- a declaration as to whether the following applications have been made advance ruling procedure (for other periods and/or countries) binding information or. a commitment from the tax authorities regarding future tax treatment a request for information comparable

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information or commitments that have been requested or issued in another contracting state concerned

- a comprehensive description of the facts with the period of validity; this may include a description of the ownership structure a description of the organizational and operational group structure a description of the areas of activity concerned the presentation of business relationships with related parties (intended contractual arrangements) the presentation and explanation of the functions and risks assumed the designation and brief description of the relevant assets a description of the market and competitive situation and the chosen business strategies the description and assessment of the planned value chains and the chosen business strategies the contributions of the companies concerned the naming of all open tax issues (also in relation to other tax administrations) in connection with the facts of the case.

Which documents are necessary for the comprehensive presentation of the facts depends on the individual case. Clarify this question with the BZSt during prefilling.

As a rule, however, the following must also be enclosed

- the relevant contracts
- the balance sheets and profit and loss accounts from the last audit period prior to the agreement period
- all documents justifying the recognition of the proposed transfer pricing method

Voraussetzungen

You can apply for an advance ruling procedure in Germany if:

- You as a company belong to a group, are based in Germany and have intra-group cross-border business relationships with affiliated companies in a country with which Germany has concluded a double taxation agreement (DTA).
- Your company has a German permanent establishment and is based in a country with which Germany has concluded a double taxation agreement (DTA).

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- Your company is based in Germany and has a foreign permanent establishment in a country with which Germany has concluded a DTA.
- You have another cross-border situation.

Further requirements for a successful application:

- there is a risk of double taxation for a particular situation,
- it is probable, that double taxation will be avoided through the advance ruling procedure, a common interpretation can be reached with the competent authority of the other state.

Kosten

Gebühr: 3.750€

This fee applies to renewal applications in non-transfer pricing cases.

Zahlung nur mit Vorkasse

Gebühr: 7.500€

This fee applies to renewal applications in transfer pricing cases if the sum of the fees for the delivery of goods is not expected to exceed EUR 6 million and the fees for services are not expected to exceed EUR 600,000 in the current financial year.

Zahlung nur mit Vorkasse

Gebühr: 15.000€

This fee applies to renewal applications in transfer pricing cases.

Zahlung nur mit Vorkasse

Gebühr: 7.500€

This fee applies to each new application in non-transfer pricing cases.

Zahlung nur mit Vorkasse

Gebühr: 7.500€

This fee applies if a successfully completed coordinated bilateral or multilateral tax audit (joint audit) has already been carried out for the matter.

Zahlung nur mit Vorkasse

Gebühr: 30.000€

This fee applies to each new application in transfer pricing cases.

Zahlung nur mit Vorkasse

Gebühr: 10.000€

This fee applies to each new application in transfer pricing cases if the sum of the fees for the delivery of

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goods is not expected to exceed EUR 6 million and the fees for services are not expected to exceed EUR 600,000 in the current financial year.
 Zahlung nur mit Vorkasse

Verfahrensablauf

Proceed as follows to apply for a prefiling procedure:

- If necessary, first make an appointment for prefiling.
- Following the prefiling, write an informal application and send it to the BZSt by email or post.
- Once the application has been received, the BZSt will set a fee for each application, which you must pay within one month.
- You can withdraw before the fee assessment is announced and no costs will be incurred. Once the fee has been set, the costs for a rejected or withdrawn application can no longer be reimbursed. In addition, further costs may be incurred abroad.
- Processing will only begin once you have paid the fixed processing fee.
- Once your payment has been received, the BZSt will check whether the other requirements for carrying out an advance ruling procedure have been met.
- If necessary, you will be asked to submit further documents.
- The competent authorities will then contact each other, exchange information and begin negotiations on the advance ruling procedure.
- As a taxpayer, you will generally be informed by the BZSt about the status of the negotiations with the foreign competent authority.
- Once the competent authorities have reached an agreement and signed a preliminary agreement, the BZSt will inform you as the applicant of the outcome.
- The BZSt will ask you to approve the preliminary agreement and you as the applicant must then submit a written declaration of consent.
- You will be asked to prepare a translation of the agreement into German for the competent state tax authority (LFB) and to sign a waiver of appeal.
- As soon as the consent and the waiver of appeal have been received, the preliminary agreement signed by the states involved can be implemented in Germany.

Bearbeitungsdauer

1 - 4 Jahr(e)

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The processing time for a preliminary assessment procedure can vary greatly because the underlying circumstances can be very different and several authorities in Germany and abroad are always involved. Depending on the circumstances of the individual case (e.g. extension applications), it can take less than a year or even several years.

Frist

A deadline must be observed after the fee has been set in order to pay the fee. The procedure can only begin after the fee has been assessed and the fee has been paid. The deadline is 1 month.

weiterführende Informationen

https://www.bzst.de/DE/Unternehmen/EUInternational/AdvancePricingAgreements/advancepricingagreements_node.html
<https://www.oecd.org/tax/transfer-pricing/transfer-pricing-guidelines.htm>

Hinweise
Rechtsbehelf

- An objection can be lodged against the rejection of an application to carry out a preliminary assessment procedure and an action can be brought before the fiscal court following the decision on the objection.
- An appeal may also be lodged against notices setting the fee and an action may be brought before the fiscal court following the decision on the appeal.

Kurztext

- Advance pricing agreement procedure in transfer pricing cases (Advance Pricing Agreements) Implementation
- Under certain conditions, affiliated companies based in different countries can apply for an Advance Pricing Agreement (APA).
- the competent tax authorities of the countries then determine common methods for determining the transfer prices in negotiations
- in addition, companies based in Germany with a permanent establishment in another country, or vice versa, can also apply for an agreement on a method for allocating profits to this permanent establishment under certain conditions
- other cross-border situations can also be the subject of the procedure if the other state agrees (Advance Mutual Agreement, AMA)

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- Generally valid for up to 5 years
- The aim of an advance mutual agreement procedure is Avoidance of future double taxation Legal certainty and planning security for taxpayers
- Prerequisite for applicants: they are resident in Germany, or they are subject to limited tax liability in Germany and are resident in a country with which Germany has concluded a double taxation agreement (DTA)
- Informal application by e-mail or by post to the Federal Central Tax Office (BZSt).
- Costs: Transfer pricing New application: EUR 30,000 Renewal: EUR 15,000 In certain cases, a reduction in fees is possible if the result of a successfully completed coordinated bilateral or multilateral tax audit (joint audit) between different countries is already available: EUR 7,500 Other cross-border matters New application: EUR 7,500 Extension: EUR 3,750
- Responsible: Federal Central Tax Office (BZSt)

Ansprechpunkt

Zuständige Stelle

Formulare

Ursprungsportal

Vorabverständigungsverfahren in Verrechnungspreisfällen (Advance Pricing Agreements) Durchführung, Vorabverständigungsverfahren in Verrechnungspreisfällen (Advance Pricing Agreements) Durchführung