New German Transfer Pricing Regulations on Business Restructurings, Documentation Deadlines and Rules for Tax Audits: Overview and Practical Implications

Two highly relevant pieces of transfer pricing legislation have been passed in Germany in 2022: The revised Ordinance on Relocation of Functions is expected to increase the number of fact patterns that can qualify as a relocation of functions and it contains stricter rules for exit tax valuation approaches. The revised General Tax Code aims at expediting tax audit processes in Germany by intensifying the system of cooperation most notably via introducing new and adjusted deadlines for tax auditors but also for taxpayers. These are expected to lead to additional pressure on taxpayers and will likely require better transfer pricing documentation processes as well as a higher level of anticipation of potential tax audit questions.

1. Introduction

Looking back at 2022 through a German transfer pricing lens, there were a few court cases and two revised pieces of legislation which will impact the transfer pricing landscape. One is the Ordinance on Relocation of Functions which is already applicable for tax years starting on or after 1 January 2022. It is of pivotal importance for any business restructuring affecting German companies and the respective transfer pricing assessment. It is the consequence of a revision of the Foreign Tax Code in 2021 and the respective rules on relocation of functions. The second legislation passed is the so-called DAC7 bill. The DAC7 bill covers the national implementation of an EU directive on information exchange and reporting obligations for digital businesses. Next to that, the DAC7 bill contained several further amendments of other tax legislation such as the General Tax Code. The revised changes in the General Tax Code directly affect transfer pricing documentation duties and have a further indirect effect on transfer pricing as it affects the rules for tax audits including deadlines, penalties, cooperation between taxpayers and tax authorities and further information requests.

The article outlines the relevant changes of both revised pieces of legislation. It summarizes the amendments including the date from which they are applicable and further information requests. Section 2. starts with the revised Ordinance on Relocation of Functions. Sections 3. and 4. deal with the amended General Tax Code from a transfer pricing perspective. For both pieces of legislation, a synopsis is provided which summarizes the amendments. Section 5. concludes and puts the amendments in a wider context.

2. New Ordinance on Relocation of Functions

In 2021, the regulations on the arm’s length principle were revised and aligned with the current OECD Transfer Pricing Guidelines. With the update of the law, the regulations on relocation of functions were also revised and put under a new section 1, paragraph 3(b) of the Foreign Tax Code (Außensteuergesetz, ASTG). The concept of relocation of functions had been implemented into German transfer pricing regulations in 2008. At that time, only few countries recognized this concept. A relocation of functions was assumed in case functions including tangible or intangible assets or other profit potential had been shifted to a related party abroad. In case the criteria stipulated by law under which a relocation of functions is assumed are fulfilled, an exit payment is due. Depending on the profit potential the amount might be nil. Since 2008, it has been debatable under which circumstances a relocation of functions needs to be assumed and how the valuation of a potential exit payment needs to be performed. An ordinance on the relocation of functions binding for taxpayers and authorities alike was enacted in 2008. Due to changes in section 1, paragraph 3(b) of the ASTG under which conditions a relocation of function is assumed, for editorial amendments and in order to reflect learnings from the last almost 15 years, a new Ordinance on Relocation of Functions (Funktionsverlagerungsverordnung, FVerlV) had been issued and was passed on 25 October 2022. The revised version of section 1 of the ASTG had

1. OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD 2022), Primary Sources IBFD
2. The German rules on relocation of functions were somewhat unique internationally, because they mandate the application of the so-called hypothetical arm’s length test, taking into consideration the specific attributes of the transferring as well as the receiving company in a wide range of situations. This two-sided valuation approach is applied to determine an arm’s length range for the transfer package as a whole comprising the entire function that is transferred. It is calculated by determining the minimum ask price of the transferor and the maximum bid price of the transferee, given their options realistically available.

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provided for the Ministry of Finance, with the consent of the Federal Council, to regulate by ordinance details of the arm’s length principle and details of its uniform application. The update of the FVerlV is the result of this and thus has legislative character.

In addition, Administration Principles binding for the tax authorities but not the taxpayers had been issued in 2010 to clarify practical questions in the application.\(^4\) However, in practice they are also highly relevant for the taxpayer given that they indicate how tax authorities (have to) assess business restructurings. It is expected that also the Administration Principles will be revised shortly to reflect the changes in the law and the Ordinance.

While the revisions of the Ordinance have not changed the relocation of function approach fundamentally, they have brought significant changes with respect to its applicability as well as details on the valuation approach. It is applicable for all relocation of functions starting from the beginning of the 2022 taxation period. In the following, the most relevant changes made in the new version of the Ordinance are summarized, highlighting their practical implications.

2.1. Revised definition of relocation of functions (section 1 of the FVerlV)

Section 1, paragraph 2 of the new FVerlV contains a revised definition of what constitutes a relocation of functions. The new definition reads as follows (relevant changes are emphasized):

\[\text{A relocation of functions within the meaning of section 1 (3b) of the German Foreign Tax Act occurs if a function, including the corresponding opportunities and risks as well as the assets or other benefits that are transferred or provided along with it, is relocated in whole or in part, such that the acquiring company is able to perform this function or expand an existing function.}\]

Hence, manifold changes have been made to the definition of what constitutes a relocation of functions:

- It is not a requirement anymore that assets are transferred as the transfer of other benefits would be sufficient. The term “other benefits” is not defined legally and thus leaves room for interpretation.
- Moreover, a relocation of an entire function is no longer necessary, and a partial transfer of a function could already be sufficient to assume a relocation of functions.
- Furthermore, the reduction of a function at the transferring company is no longer a determining factor for a relocation of functions under this definition; rather, now only the perspective of the receiving company is relevant, whereas a restriction of functions at the transferring company is not.

In combination, these changes lead to an expansion of the definition of relocation of functions, making it applicable in a wider range of cases. Taxpayers should therefore carefully assess every business restructuring if the criteria of a relocation of function are fulfilled. Even if they assume that they are not fulfilled, it is recommendable to document that. A business restructuring even without a relocation of functions might be seen as extraordinary transaction which needs to be documented six months after the end of the fiscal year. Under current TP documentation rules, such documentation needs to be submitted upon request within 30 days.

2.2. Escape from transfer package valuation (section 1 of the FVerlV)

The revision of section 1 of the ASTG already significantly reduced the possibilities for the taxpayer to escape from the valuation of the entire transfer package which is the default valuation approach. According to the revised law, a valuation of the standalone assets (as opposed to the valuation of the transfer package) is now only possible if the taxpayer can credibly demonstrate that neither material intangible assets nor other benefits were the subject of the relocation of functions. The new Ordinance further specifies in section 1, paragraph 4 of the FVerlV that this is the case when an acquiring enterprise renders services previously rendered exclusively to the transferring enterprise based on the cost-plus method subsequently to a company other than the transferring company for prices that are not higher than appropriately determined by the cost-plus method.

Hence, from a practical perspective the escape clause to value assets on a standalone basis rather than an entire transfer package would only be possible if a service function remunerated on the cost-plus method is outsourced.

2.3. Value of the transfer package: Tax effects and valuation technique (section 2 of the FVerlV)

Tax effects also have to be considered explicitly in the valuation of the transfer package (section 2, sentence 1 of the FVerlV). The Ordinance does not specify how exactly these tax effects have to be taken into account; the Administrative Principle to be updated may provide more details. It is likely that the so-called tax amortization benefit shall be considered which is the discounted value of the depreciation induced tax advantages on the buyer-side. This view of the German tax authorities had already been included in the Administration Principles on Relocations of Functions in 2010. In an international context, however, there has not been a consensus on this issue, potentially leading to dispute. Furthermore, in practice more and more countries do not accept the depreciation of a goodwill which would mean that the portion of the transfer package which is to be allocated to goodwill must not be considered when calculating the tax amortization benefit. This, however, is not specified by the new FVerlV and should be outlined in more detail by the Administrative Principles.

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Moreover, for the valuation, a capital value-oriented method has to be applied according to section 2, sentence 3 of the FVerlV whereas the law (section 1, paragraph 3, sentence 7 of the ASTG) had only mandated the use of an economically recognized valuation method. Both cost-based and market-based valuation approaches will therefore most likely not be acceptable anymore.

2.4. Capitalization rate (section 4 of the FVerlV)
For the determination of the capitalization rate, a mandatory capital market reference has been introduced and explicit reference has been made to a third-party comparison (section 4 of the FVerlV). Whilst in the past simplified approaches to determine the capitalization rate could be applied, under the new Ordinance this is no longer possible.

2.5. Capitalization period (section 5 of the FVerlV)
For relocation of functions, unlimited capitalization periods are continued to be assumed as the default by the Ordinance (section 5 of the FVerlV). In order to deviate from this presumption, the taxpayer now has to provide reasons for the application of a specific capitalization period depending on the circumstances of the performance of the function. Under the old Ordinance, it was sufficient that a taxpayer credibly demonstrated that a limited capitalization period was applicable. Hence, the burden of proof increased in this respect.

2.6. Minimum price (section 6, paragraph 5 of the FVerlV)
In case the minimum ask price of the relocating company is zero or below, the arm’s length principle shall be applied to examine what price an independent third party would be willing to pay to take over the function (section 6, paragraph 5 of the FVerlV). A mere mechanical application of the valuation principles is not sufficient in situations where the transfer package has a negative value.

2.7. Deleted provisions
In addition to the changes outlined above, several provisions have been deleted in the course of the revision of the FVerlV.

Presumption of transfer of use upon request
Under section 1, paragraph 2 of the old version of the FVerlV, in case of doubt as to whether a transfer or a transfer of use, i.e. a licence, was to be assumed with regard to the transfer package or individual parts, a transfer of use could be assumed at the request of the taxpayer. This allowed to limit the tax impact in unintended and unrecognized cases, in which a relocation of functions was only assumed by the tax administration afterwards. In the new version of the Ordinance, this possibility to assume a licence in such cases was deleted without replacement. Hence, a licence instead of a one-time exit payment is only possible in the future if the underlying transaction can be classified as a licence and would not be seen as an outright sale.

Negative delineation
Section 1, paragraph 7 of the old version of the FVerlV was also deleted without replacement. Its sentence 1 clarified that the mere sale/transfer of assets and the mere provision of services did not constitute relocation of functions.

Sentence 2, first alternative specified that secondments without a transfer of function do not constitute relocation of functions.

For the question of whether a relocation of function exists, sentence 2, second alternative of the old version of the FVerlV alluded to the arm’s length principle and stated that transactions that are not regarded as a sale or acquisition of a function between unrelated third parties do not constitute a relocation of functions.

While the explanatory notes accompanying the Ordinance state that these provisions were superfluous and their deletion does not broaden the cases of relocation of functions, the impact remains to be seen in practice. Especially, secondments and asset transfers shall not be seen as relocation of function as no function is shifted.

2.8. Synopsis
Table 1 summarizes the key changes between the previous and the new FVerlV.

2.9. Conclusion
Given that the new FVerlV is first applicable for relocation of functions that fall in the 2022 taxation period, taxpayers should carefully analyse whether they have correctly assessed potential relocation of functions that have already taken place. In addition, for any future restructurings due care should be given to analyse the impacts on German companies and/or permanent establishments to ensure compliance with the updated rules.

3. Transfer Pricing Documentation Submission Deadline and Penalties
As a second piece of legislation, within 2022, the so-called DAC7 bill passed the parliament and was finally approved on 16 December 2022. The DAC7 bill covers the national transmission of an EU directive on information exchange and reporting obligations for digital business. Next to that, the DAC7 bill contained several further amendments to other tax legislation such the General Tax Code (Abgabenordnung, AO). Sections 3. and 4. summarize key aspects of the revised AO relevant for transfer pricing purposes.

The mere sale/transfer of assets, provision of services and secondments did not constitute relocation of functions

Table 1. Overview of abovementioned changes in the FVerlV

<table>
<thead>
<tr>
<th>Section</th>
<th>Prior regulation</th>
<th>New regulation</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>The transferor transfers or concedes the right of use of assets and other advantages including the corresponding chances and risks to the recipient; the transfer enables the recipient to exercise a function that has so far been exercised by the transferor; and the transfer results in a reduction or limitation of the level at which the transferor continues to exercise the function in question</td>
<td>Transfer of assets is no longer prerequisite for the assumption of relocation of function Relocation of an entire function is no longer necessary, a partial transfer of a function could already be sufficient Only perspective of the receiving company is relevant, a restriction of functions at the transferring company is not</td>
</tr>
<tr>
<td>2</td>
<td>Determination of value of transfer package</td>
<td>Tax effects explicitly have to be taken into account</td>
</tr>
<tr>
<td>4</td>
<td>Interest premium has to reflect functions and risks adequately</td>
<td>Mandatory reference to the capital market and third-party comparison has been introduced</td>
</tr>
<tr>
<td>5</td>
<td>Taxpayer could apply a limited capitalization period if this could be credibly demonstrated</td>
<td>Taxpayer has to prove limited capitalization period</td>
</tr>
<tr>
<td>7 (old)</td>
<td>The mere sale/transfer of assets, provision of services and secondments did not constitute relocation of functions</td>
<td>Deleted without replacement</td>
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3.1. Documentation submission deadlines (section 90 of the AO)

As of today, both the Local File and the Master File need to be submitted upon the tax authority’s request within 60 days. Such requests are typically issued as part of tax audits. Within the request, the transactions, whose Local File documentation shall be provided, shall generally be specified. As part of a general revision of the AO the submission deadlines are revised in section 90, paragraph 3 of the AO. The revised AO specifies new occasions and timelines for the submission of transfer pricing documentation. It shortens the submission deadlines for regular transfer pricing documentation from 60 days to 30 days and sets out that documentation also needs to be provided to the tax authorities without an explicit request to do so upon a formal tax audit announcement. It further specifies that tax authorities can also request documentation outside of the tax audits, for instance as part of mutual agreement procedures, advance pricing agreement procedures and potentially further instances.

The changes are first applicable for taxation periods for which a tax audit is formally announced after 31 December 2024, i.e. all taxation periods not barred by statute of limitations, for which a tax audit will not have been announced until 31 December 2024. In other words, it is also applicable for current years in case the tax audit will be formally announced after 31 December 2024. In practice, the authors observe audit periods going back three to five years. Hence, it is likely that the new regulations will be applicable to transfer pricing documentation reports that cover fiscal years starting with 2019/20. Depending on the statute of limitations which is generally linked to the date when the tax return was filed/due, documentation years prior to 2019 will in most cases not fall under the new regulations. This however, should be assessed on a case-by-case basis.

The above changes to the transfer pricing documentation requirements raised many concerns amongst German MNEs and tax advisors as they challenge widely adopted documentation concepts that are based on cost-benefit analyses and rely on certain self-defined documentation thresholds. Due to the much stricter timelines and fewer chances to discuss such approaches with tax auditors, many observers are concerned that the changes will lead to a significant expansion of documentation requirements, specifically regarding smaller intercompany transactions. In addition, it will be difficult practically to prepare and submit a Local File within 60 days. Hence, taxpayers are forced to review their documentation processes and may consider an a more timely and more comprehensive documentation approach as appropriate going forward in order to be able to meet the 30-day deadline.

3.2. Administrative fines in the case of delayed compliance (section 162 of the AO)

In the case of a delayed compliance with e.g. the submission of usable transfer pricing documentation or other acts of taxpayer cooperation, the tax authorities can impose an administrative fine. Under the old regulations, such fines were in general assessed at the very end of a tax audit. Due to this timing, such fines were in practice sometimes part of final settlement discussions with tax auditors. Based on the new law, the timing requirement for assessing the fine at the end of the audit was removed and the fine can now be imposed directly after the taxpayer (late) complied with the request. Fines are possible for each individual case of a late compliance within the same tax audit.

The changes are first applicable for taxation periods for which a tax audit is formally announced after 31 December 2024.

A timely response by the taxpayer to comprehensive tax audit requests especially in the area of transfer pricing can be considered a common challenge due to several reasons, including resource constraints. Furthermore, in the context of the above-mentioned increased documentation requirements under section 90 of the AO, even a partial non-compliance, if assumed by a tax auditor, would be sufficient to impose fines. Therefore, this change is prone...
to have distinct relevance if the imposed administrative fines prove to be material for the taxpayers (fines can generally range from at least EUR 100 per day up to EUR 1 million in total).

4. Revised Tax Audit Framework for Transfer Pricing Audits

The amendment of the revised documentation submission deadline is part of a broader amendment of the AO. The aim of the revised AO is to accelerate tax audits, also with regard to transfer pricing. As such, several further amendments had been made which shall be outlined in sections 4.1. to 4.5.

4.1. Time frame for tax audit (section 171 of the AO)

A system shift is introduced to the concept of delayed statutes of limitations in cases of ongoing tax audits. Before the legislative changes, the commencement of a tax audit generally paused the statute of limitations deadlines to a basically indefinite time. According to the new regulation, a specific time frame is set for tax audits (up to five years) with certain exceptions which can extent this deadline. After these five years, a statute of limitations could become effective, making any tax audit adjustments impossible. Worth mentioning in this context are the extensions to the five-year deadline, which can take effect in cases of taxpayer non-compliance with newly introduced so-called “qualified requests to cooperate” (see details in section 4.5) as well as in cases of delay caused by the initiation of an international administrative cooperation process involving fiscal authorities of other countries.

The changes are first applicable for taxes that first arise under German tax law after 31 December 2024. For taxes that arise on or before that date, the old provisions will continue to be applicable, even if the German tax audit starts after 2024.

The changes aim to expedite tax audit processes and conclude audits within the now defined 5-year time frame. The change is welcomed by many observers; however, to speed up the process substantially, it should have been more ambitious. Even under the new rules, the calculated regular end date for tax audits (without taking into account any of the above-mentioned exceptions) could be 9 or 10 years after the end of the respective fiscal year (and even longer in irregular cases, e.g. tax audit assumes gross negligence or intent under criminal tax law). It remains to be seen, if and how the fiscal authorities will make use of the available exceptions for extending tax audit deadlines in cases where the end of the 5-year time frame approaches.

4.2. Obligation to correct tax declarations (section 153 of the AO)

Under current legislation, taxpayers have the general legal obligation to correct their tax declarations, if simplified – they come to the conclusion that filed declarations were incorrect or incomplete and, in consequence, resulted in under-taxation. Based on the newly extended obligation, taxpayers will now also have the legal obligation to correct tax declarations if (i) formal findings by a tax audit led to a correction of past year(s) by the fiscal authority, (ii) the taxpayer did not formally appeal the correction, and (iii) the tax audit findings also have an effect on tax declarations which have not been subject to that tax audit. This can, for instance, cover other tax declarations that fall within the same period but that were not audited and/or could extend to declarations filed for subsequent periods.

The changes are first applicable for taxation periods for which a tax audit is formally announced after 31 December 2024.

In case of corrections to the transfer prices of ongoing intercompany transactions, it cannot be ruled out that, under the new regulations, the taxpayer has the legal obligation to correct (all) subsequent years. At the moment, it is not clear if and how this obligation can be limited, e.g. by the fiscal authority in cases of mutual tax audit compromises which are seen quite often in German tax audit practice. Some observers interpret the changes as encouraging taxpayers to escalate tax audit disagreements, i.e. filing appeals, as the alternative option to seek a compromise which is limited to the period under audit seems to become more risky.

4.3. Partial tax assessment in tax audits (section 180 of the AO)

The new regulations also include the addition of a new paragraph 1(a) to section 180 of the AO. The new paragraph allows tax authorities to issue “partial tax assessments” as a part of the tax audits. Such partial tax assessments could cover those topics for which there is already an agreement between a taxpayer and the tax auditor, while the remainder of the tax audit is still ongoing. Upon explicit request by a taxpayer, such partial tax assessments shall be issued by the tax office.

The changes are first applicable for taxation periods for which a tax audit is formally announced after 31 December 2024.

These provisions are expected to be relevant in cases of long-lasting tax audits in which a number of topics are already agreed but certain other topics (often transfer pricing matters) are still under discussion. Upon issuance of a partial tax assessment notice, taxpayers would be required to make the (partial) payment (or receive the partial refund). This partial tax assessment would then be completed by a full tax assessment at a later stage once the overall tax audit is closed. The partial tax assessments can be a helpful instrument for taxpayers, for example it can help avoid additional interest on late taxes for those topics for which there is already agreement on adjustment amounts. Still, for taxpayers preferring to discuss all tax audit topics in one closing meeting at the end of a tax audit (which often helps finding a settlement across multiple topics), a partial tax assessment could be to the disadvantage of the taxpayer.
4.4. Cooperation between tax auditors and taxpayers (section 199 of the AO)

Section 199, paragraph 2 of the AO was amended as well. While the previous version of this provision stipulated in a relatively vague manner that taxpayers are to be informed about findings and their tax consequences during ongoing tax audits, the new law adds two additional sentences to this provision to further specify and expand this provision.

According to the new law, tax auditors can formally agree with taxpayers that discussions are to be held at regular intervals for interaction and cooperation. Particularly in complex cases, regular and open discussions can have a significant impact on the efficient resolution of tax audits. For many taxpayers, it will be advisable to suggest making use of such discussion formats and to agree on frameworks for their cooperation. In other cases, such as those regularly encountered in the area of transfer pricing, frequent and open discussions can have a significant impact on the efficient resolution of tax audits.

4.5. Qualified request for cooperation (section 200(a) of the AO)

In contrast to the proposed formalization of a more cooperative tax audit approach in the proposed amendment of section 199 of the AO (see section 4.4.), the newly included section 200(a) of the AO intends to give tax auditors additional instruments to be used for (allegedly) uncooperative taxpayers.

Section 200(a) of the AO enables tax auditors to request information (or request other forms of taxpayer cooperation) using a newly introduced written or electronic formal administrative act. This administrative act will be called qualified request for cooperation and it is foreseen to be a legally enforceable act. In the case that taxpayers do not comply with a qualified request for cooperation in a timely manner (generally one month), the tax auditors must impose penalties. In addition, the above-discussed stricter statute of limitations will be extended by at least one year in the case that a taxpayer fails to meet the one-month deadline, effectively giving the tax authorities additional time to conclude their audit.

The changes are first applicable for taxation periods for which a tax audit is formally announced after 31 December 2024.
4.6. Synopsis

Table 2 summarizes the key changes between the previous and the new regulations of the AO relevant for transfer pricing purposes including the documentation-related aspects outlined in section 3. For ease, the applicable date is added. An important aspect to note is that despite many changes coming into effect only for tax audits announced after 31 December 2024, such tax audits will typically cover fiscal years between 2019 and (up to) 2023 based on German statute of limitations regulations. Hence, taxpayers should review their established processes in terms of tax audit preparations and TP documentation preparation for such years and create awareness within their organization that tax audits covering these years might see stricter timelines, more/quicker fines, intermediate partial tax assessments, wider transfer pricing documentation scopes, but also enhanced cooperation mechanisms with tax auditors. A detailed assessment of the German statute of limitations rules is recommended to assess to which years such changes ultimately apply.

5. Practical Consequences

Two highly relevant pieces of transfer pricing legislation have been passed in Germany in 2022. The revised Ordinance on Relocation of Functions is applicable for tax years starting on or after 1 January 2022. It intends to align the revised Foreign Tax Code with the previous Ordinance. While some amendments are purely editorial or ensure alignment between the Foreign Tax Code and the Ordinance, others clear go beyond what is stipulated by the Foreign Tax Code. Examples are very low thresholds for the assumption of a relocation of function and stricter rules for valuation approaches. Hence, those parts of the Ordinance might not comply with the legal base and as such could be subject to formal procedures. In practice, this will most likely result in a higher number of assumed relocations of functions by tax authorities and potentially higher exit payment claims. Due to the high amounts at stake in the case that an exit payment is calculated, more frequent and more intense tax audit discussions are expected. It is recommend firstly, to review existing processes to identify relocations of functions including an alignment with critical business players such as supply chain, marketing, sales, R&D and production and secondly, in the case of transactions that were determined to not constitute a relocation of functions, to document in detail the underlying transfer pricing analysis that led to this conclusion.

The revised regulations in the General Tax Code will largely not be applicable immediately, but mostly take effect only for tax audits that are announced from 2025 onwards. The aim is to expedite tax audit processes. It is expected that pressure on taxpayers within tax audits will increase, e.g. due to the newly introduced qualified request for cooperation and the associated potential fines if such requests are not answered within one month (default period). This requires more anticipation of potential questions or an even better transfer pricing documentation with regard to functional and risk profiles, underlying calculations and support documents (such as royalty calculations or management fee calculations including benefit test evidence). An open communication with tax auditors on such procedures can help to smoothen the process in practice. The reduction from 60 to 30 days for submitting transfer pricing documentation puts taxpayers into a position where they likely need to prepare more documentation upfront (and potentially use lower/no materiality thresholds) as a 30 day period will often be too short to create/amend transfer pricing documentation in the case of a tax audit announcement. Considering shorter periods to submit documentations upon request (and also considering requirements to submit Local Files with tax returns as observed in other countries), the focus of many taxpayers will be on more streamlined documentation processes in the future.

To conclude, the revised changes in German transfer pricing legislation will put light on business restructuring monitoring processes, internationally aligned transfer documentation processes and established tax audit approaches. Backup documentation will become more important to further justify the arm’s length nature of both business restructuring and ongoing transactions.