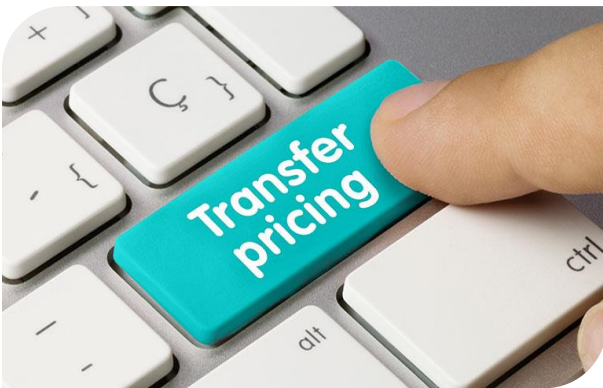


From Cooperation to Obligation: Section 12 of the StAbwG Annual Transfer Pricing Documentation

With the Act to Combat Tax Avoidance and Unfair Tax Competition (Tax Haven Prevention Act – StAbwG), the German legislature implemented a series of stricter measures as early as July 1, 2021, to combat business relationships with non-cooperative tax jurisdictions.



Introduction

At the core of these regulations is § 12 StAbwG, which standardizes the “enhanced duty to cooperate” in certain foreign relationships and thus contains a previously little-noticed but substantively significant expansion of transfer pricing documentation obligations in the area of transfer pricing compliance requirements as well as strict deadlines for German multinational companies.

Legal Background

The previous legal situation was governed by Section 90(3) of the German Fiscal Code (AO). Taxpayers were required to maintain records for business relationships with related parties abroad

and submit them only upon request by the tax authorities or upon notification of a tax audit.

A characteristic feature of the previous system was that documentation was often prepared merely as a precautionary measure. An actual obligation to submit the documents existed only in the event of an audit, in which case the documents generally had to be submitted within 30 days.

However, § 12 of the Tax Compliance Act (StAbwG) significantly expands this approach. Paragraph 1 already clarifies that the general obligations to cooperate under § 90 AO are no longer sufficient and must be supplemented by enhanced cooperation obligations.

Paragraph 2 specifies this requirement and obligates the taxpayer to prepare comprehensive documentation. This includes

- descriptions of business relationships (transactions involving goods and services, loan and insurance relationships, transfers of rights, and cost allocations arrangements),
- lists of agreements relating to intangible assets (including cost contribution and licensing agreements),
- detailed functional and risk analyses,
- significant assets employed,
- business strategies as well as market and competitive conditions, and
- disclosure of shareholders in the relevant tax jurisdiction.

Another new requirement is that the records must be prepared no later than one year after the end of the calendar or fiscal year and submitted both

to the competent tax authority and—in the cases covered by Section 138a of the German Fiscal Code (AO)—to the Federal Central Tax Office. This means that the obligation is no longer merely one of retention or submission, but rather an annual obligation to transmit the records.

Section § 12(3) of the Tax Administration Act (StAbwG) is particularly significant: Under this provision, the tax administration may require the completeness of the information to be confirmed by affidavit. In addition, the taxpayer is required to authorize the authority to assert claims for information against third parties both in and out of court.

Scope of Application of Section 12 StAbwG
Section 12 of the StAbwG applies whenever a taxpayer maintains business relationships with companies or individuals in a so-called non-cooperative tax jurisdiction.

A decisive factor here is the list published by the Federal Ministry of Finance or the European Union of such jurisdictions that refuse to cooperate in international tax matters (the so-called “blacklist”).

As soon as intra-group transactions with companies in these countries exist—whether through supplies, services, loans, licensing, or cost-sharing agreements—there is an obligation to prepare and submit comprehensive transfer pricing documentation annually in accordance with Section 12 of the StAbwG.

This obligation applies regardless of the volume of business and is in addition to the general cooperation obligations under Section 90 of the German Fiscal Code (AO) and the requirements of the General Transfer Pricing Regulation (GAufzV).

Of particular practical relevance is the fact that, in addition to classic tax havens, Russia is also included on the current EU list dated February 18, 2025. As a result, numerous corporate groups that continue to maintain economic ties with Russia—whether through subsidiaries, supply relationships, or licensing structures—are directly subject to the strict requirements of Section 12 of the Austrian Transfer Pricing Act (StAbwG). Taxpayers must therefore check whether direct or indirect connections to companies in these jurisdictions exist. Even minor transactions are sufficient to trigger the comprehensive documentation and reporting obligations.

Sanctions and Risks

Failure to comply with the obligations under Section 12 of the StAbwG entails significant risks. In addition to the general powers of assessment under Section 162 of the AO and the grounds for fines under Section 379 of the AO, Section 12(3) of the StAbwG provides for specific sanctions. These range from the submission of an affidavit to the obligation to grant the tax authorities broad powers of attorney to assert claims for information. Particularly severe are the surcharges that may be imposed in the event of insufficient or late documentation. Added to this are the interest consequences pursuant to § 233a AO, which increase additional tax assessments by six percent annually.

Implications for Practice

For multinational companies, Section 12 of the Transfer Pricing Act (StAbwG) entails a fundamental realignment of transfer pricing documentation. In the cases mentioned above, this must henceforth be understood as an annual component of the tax closing process. Companies can no longer rely on maintaining documentation solely for the purpose of a tax audit. We therefore recommend responding early to the scope of this regulation and implementing processes or a tax CMS that ensure timely compliance.

Conclusion and Recommendations from Nexia

Section 12 of the StAbwG has been in effect since July 1, 2021, and represents a new dimension in transfer pricing documentation. The provision establishes a separate, annually recurring obligation to prepare and submit extensive documentation that exceeds the previous requirements of Section 90 of the German Fiscal Code (AO) and the GAufzV in both quality and quantity.

It is recommended that the annual preparation of documentation—and, in the case of business relationships with blacklisted countries, the submission of such documentation—be firmly integrated into the financial reporting and compliance process, that clear responsibilities be defined, and that the content be regularly reviewed for completeness and consistency. Nexia also provides support in establishing efficient internal processes and implementing appropriate CMS structures.

Only through a proactive approach can fines, tax assessments, interest charges, and double taxation be reliably avoided.



Do you have questions about this topic?

We are happy to assist you in fulfilling your obligations. Please do not hesitate to contact us with any questions. Simply reach out to our experts for a no-obligation consultation:

Your contacts

Henning Straeter
Partner | Head of Transfer Pricing
T: +49 211 17170-463
E: henning.straeter@nexia.de

Levin Flascha
Senior Associate | Transfer Pricing
T: +49 211 17170-350
E: levin.flascha@nexia.de

Visit us at



www.linkedin.com/company/nexia-germany



www.xing.com/pages/nexia-germany



www.instagram.com/nexia_gmbh

www.nexia.de

Legal Notice

Publisher
Nexia GmbH
Auditing Firm
Tax Consulting Firm
4 Georg-Glock-Str.
40474 Düsseldorf
www.nexia.de

Responsible for content
Henning Straeter
c/o Nexia GmbH
Auditing Firm
Tax Consulting Firm
Georg-Glock-Straße 4
40474 Düsseldorf

As of 10/2025

All text in this document is intended to provide general guidance on matters of interest to the reader and is not a substitute for individual consultation. Liability for any actions taken based on the use of the information provided is expressly excluded. The entire content of this document has been prepared with the utmost care and to the best of our knowledge and belief. No liability is assumed for the accuracy, completeness, or timeliness of the information.

Nexia GmbH Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft is a member of Nexia, a leading global network of independent audit and advisory firms that are members of Nexia International Limited. Nexia International Limited is a company registered on the Isle of Man and does not provide services to clients. For more information, please visit <https://nexia.com/member-firm-disclaimer>.