

### **Section 90(3)**

(3) Taxpayers shall keep records on the nature and content of their business relations that fall under the definition provided under section 1 subsection (4) of the External Tax Relations Act. The obligation to keep records shall encompass business transactions (documentation of facts); the economic and legal aspects of any arm's length agreement on terms of business, especially prices (transfer prices); and information on when the transfer prices were set, which transfer pricing method was used, and which comparability data were used (documentation of commensurateness). If a taxpayer is required to keep records as described in the first sentence above for an enterprise that forms part of a multinational enterprise group, such records shall include an overview of the type of business activities conducted by the enterprise group and of the transfer pricing method used by the group, unless the enterprise's revenue in the previous financial year totalled less than 100 million euros. A multinational enterprise group is any group comprised of at least two enterprises that are related within the meaning of section 1 subsection (2) of the External Tax Relations Act and that are resident in different countries, or any group comprised of at least one enterprise with at least one permanent establishment in another country. Records of exceptional business transactions shall be compiled as soon as possible. Additional records as described in this subsection shall be submitted to the revenue authorities at their request.

(4) The revenue authorities may at any time request the submission of records as described in subsection 3; such submissions shall be governed by section 97. In the case of an external audit, records shall be submitted without a separate request. Records shall be submitted within 30 days after the request is made or after disclosure of the audit order. The period for submission may be extended in justified individual cases.

(5) In order to ensure the uniform application of the law, the Federal Ministry of Finance is authorised to stipulate, by way of ordinances issued with the consent of the Bundesrat, the type, content and scope of the records as described in subsections 3 and 4.

### **Section 162(2), (3) and (4)**

(2) An estimate shall be undertaken in particular where the taxpayer is not willing to provide sufficient explanation regarding his details or refuses to give further information or a sworn statement or breaches his obligation to cooperate pursuant to section 90(2). The same shall apply where the taxpayer cannot furnish accounts or records which he is obliged under tax laws to keep, where the accounts or the records pursuant to section 158(2) cannot be used as a basis for taxation or where there are factual indications of the incorrectness or incompleteness of the details provided by the taxpayer on taxable income or business asset increases and the taxpayer fails to give his

consent pursuant to section 93(7), first sentence, number 5. Where the taxpayer breaches his obligation to cooperate under section 90(2), third sentence, it shall be refutably assumed that taxable income in states or territories within the meaning of section 90(2), third sentence exists or is higher than the income declared.

(3) If a taxpayer breaches his obligation to cooperate under section 90(3) by failing to submit records of a business transaction or if the business transaction records submitted are essentially of no use, or if it is determined that he has not compiled records as described in the fifth sentence of section 90(3) in a timely manner, it shall be rebuttably presumed that his taxable income in Germany - which the records described in section 90(3) serve to determine - is higher than the income he declared. If in such cases the revenue authority must conduct an estimate and if this income can be determined only within a certain range - and in particular only on the basis of a price band - then the unfavourable limit of that range may be selected to the detriment of the taxpayer. If, despite the submission of usable records by the taxpayer, there are indications that the application of the arm's length principle would cause the taxpayer's income to be higher than the income declared on the basis of the submitted records, and if corresponding doubts cannot be cleared up because a foreign related party fails to fulfil its obligation to cooperate under section 90(2) or its obligation to provide information under section 93(1), the second sentence above shall apply accordingly.

(4) If a taxpayer fails to submit records as described in section 90(3) for a business transaction, or if the records submitted for a business transaction are essentially of no use, a penalty of 5,000 euros shall be imposed. The penalty shall be at least 5 percent and at most 10 percent of the additional income that results from a correction carried out on the basis of subsection (3) above, if this leads to a penalty of more than 5,000 euros. As a rule, the penalty shall be imposed after the completion of an external audit. In cases where usable records are submitted late, the penalty shall total up to 1,000,000 euros, and shall be at least 100 euros for each full day following the expiration of the deadline; it may be set in sub-amounts covering full weeks or months of late submission. Insofar as the revenue authorities are given discretion in determining the penalty amount, their decision shall take into account not only the penalty's objective of inducing taxpayers to compile and punctually submit records as described in section 90(3), but also, and in particular, the benefits derived by the taxpayer and, in the case of late submission, the length of time by which the deadline has been missed. No penalty shall be imposed in cases where the non-fulfilment of obligations under section 90(3) appears to be excusable or the degree of fault is negligible. Fault on the part of a legal representative or aide shall be deemed the fault of the taxpayer.