

Section 90 – Obligation of participants to cooperate¹

(1) Participants shall be obliged to cooperate with the authorities in establishing the facts of the case. They shall discharge this obligation in particular by the full and truthful disclosure of the facts relevant for taxation and by indicating any evidence known to them. The extent of this obligation shall be determined by the circumstances of the individual case.

(2) Where circumstances relating to transactions effected outside the territory of application of this Code are to be established and subjected to the provisions of tax law, the participants shall clarify these circumstances and procure the necessary evidence. In doing so, they shall exhaust all legal and practical means available to them. Where there are objectively recognisable indications to assume that the taxpayer has business relations with financial institutions in a state or territory with which there is no agreement to provide information in accordance with Article 26 of the OECD Model Tax Convention on Income and on Capital in the version of 2005, or the state or the territory does not provide information to a comparable extent or is not willing to engage in a corresponding provision of information, the taxpayer shall at the revenue authority's request make a sworn statement affirming the correctness and completeness of the details provided by him and authorise the revenue authority to assert on his behalf, both in and out of court, the possible entitlement to information against the credit institutions named by the revenue authority; the sworn statement may not be compelled pursuant to section 328. A participant may not plead inability to clarify circumstances or to submit evidence when he, depending on the case, could, in structuring his circumstances, have afforded himself or have himself given the opportunity to do so.

(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. Revenue authorities should require the submission of records only for the purpose of conducting an external audit. Such submissions shall be governed by section 97. Submissions shall be made on request within a period of 60 days. Records of exceptional business transactions shall be compiled as soon as possible and submitted within a period of 30 days upon request by the revenue authorities. The period for submission stipulated in the seventh and eighth sentences above may

¹ This translation is provided merely for information purposes. Only the German language version is authoritative for the application of the law.

be extended in duly justified individual cases. Additional records shall be submitted upon request by the revenue authorities. In order to ensure the uniform application of the law, the Federal Ministry of Finance shall be authorised to stipulate, by way of ordinances issued with the consent of the Bundesrat, the type, content and extent of the records to be kept.