Cooperative Compliance Programme in Austria (Horizontal Monitoring)

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Voluntary alternative to traditional retroactive tax audit
- Accompanying supervision & tax certainty before the actual tax return is filed
- Pilot project from 2010 to 2018 (based on MoU with participants)
- Legal framework as of 1.1.2019
- Increased transparency and disclosure obligations
  - Facts that pose potential risk of being assessed differently by the authorities
- Effective & certified Tax Compliance Management System (TCMS)
- Single point of contact for taxpayer
- Extended obligation to provide advance information/rulings
  - Regular meetings for discussion of drafts of tax return
  - Timely good faith-information also for actions not yet taken
- No re-opening of assessed years (general rule)
  - Subsequent tax audits only under very narrow circumstances (criminal offences, MAP etc);
Benefits

- Much faster procedure & enhanced tax certainty
  - Tax authorities assess facts before tax return is filed
  - Prompt assessment & omission of subsequent tax audit

- Enhanced planning certainty
  - Again due to prompt assessment & advance rulings for future actions

- Reduced compliance costs
  - no retroactive audits, fewer litigation procedures

- Reduced tax costs
  - avoidance of a „too cautious“ approach in case of legal uncertainties

- Enhanced reputation (Good Corporate Citizen)

- More effective use of limited resources
  - Self regulation of participating taxpayers (TCMS) => tax audit-related work is shifted to the cooperative taxpayers & their advisors
  - Fewer appeal-/court procedures
  - Authorities shift resources to non-compliant taxpayers/high-risk cases
Taxes included

- corporate income tax
- income tax
- chamber contribution
- advertising tax
- research premium
- standard consumption tax
- carbon tax
- energy tax rebate
- natural gas tax
- excise taxes
- motor vehicle tax
- VAT
- electricity tax
- taxes included
- stamp duties, transaction taxes and gambling fees
- customs duty
- payroll tax & social security contributions

Pre-requisites
- Tax Trustworthiness
- Tax Compliance Management System (TCMS)

Entry/Application procedure
- Exit
- Contact person
- Locations
**Pre-requisites**

- **Sales**
  - > EUR 40 mio

- **Seat, Place of Management or PE in Austria**

- **Tax Trustworthiness**

- **TCMS (certified)**

- **Cooperative Compliance Programme**

**Concept**

**Benefits**

**Taxes included**

**Pre-requisites**

- Tax Trustworthiness
- Tax Compliance Management System (TCMS)
- Entry/Application procedure
- Exit
- Contact person
- Locations
Tax Trustworthiness

Good conduct in the past

- No conviction for an intentional or grossly negligent fiscal offence, neither against the management nor the company itself

Tax Reliability

- Reliability in terms of honesty, integrity, reliable behavior towards the tax authorities..

  Overall assessment
  - behaviour & findings in previous tax audits
  - compliance with disclosure and filing obligations
  - timely payment of tax liabilities
  - pending fiscal criminal proceedings
  - ...

Tax authorities scrutinise the last 5 years prior to the application.
### Tax Compliance Management System (TCMS)

**Legal Definition (Sec 153b (6) FFC):**

“A TCMS comprises all measures taken by a company that ensure accurate reporting of tax base and timely and correct payment of taxes. The TCMS is based on a **comprehensive risk assessment**, which **constantly adapts** to changing conditions. The risk assessment, the resulting management processes as well as necessary control measures have to be documented on a regular basis.”

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Ensure the accuracy and completeness of disclosed information &amp; tax payments</th>
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<tbody>
<tr>
<td><strong>Means</strong></td>
<td>Comprehensive and ongoing risk assessment &amp; management &amp; documentation</td>
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<tr>
<td>Certification</td>
<td>CPA/tax advisor has to perform an initial „appropriateness test“ (design &amp; implementation) and subsequently (every 3 years maximum) an „effectiveness test“ (no assurance, only expert opinion).</td>
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4 Components of TCMS by law / Services by LeitnerLeitner

**Implementation**
- Description of the risk & control environment, commitment to tax loyalty...
- (integrated) risk-control-matrix
- Instructions, Checklists, Trainings, 4-eyes-controls etc
- Documentation
- Newsletter, Trainings

**Components of TCMS**

- Tax Guideline
- Risk assessment
- Control measures
- Ongoing advancement

**Expert Opinion**
- Appropriateness Test
- Effectiveness Test

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**Concept**
- Benefits
- Taxes included

**Pre-requisites**
- Tax Trustworthiness

**Tax Compliance Management System (TCMS)**
- Entry/Application procedure
- Exit
- Contact person
- Locations
Exkursus: TCMS-component „Risk assessment“ in Detail

Identified risks

<table>
<thead>
<tr>
<th>Amount of damage</th>
<th>Probability of occurrence</th>
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<tbody>
<tr>
<td>3</td>
<td>3</td>
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<tr>
<td>2</td>
<td>2</td>
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<tr>
<td>1</td>
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</table>

Gross risk

- high
  - Controls
    - 4-eyes-controls
    - Sample controls
    - Automated controls
  - Measures
    - Checklists
    - Trainings
    - Active communication of principles

- medium
  - Principles
    - Guidelines
    - Manuals
    - Work instructions

- low

- Insignificant
  - Value = 0
    - Documentation in the risk-control-matrix as proof of a comprehensive risk analysis
    - Periodical re-valuation of the assessment
Entry/Application procedure

- Expert opinion on the TCMS
- In practice pre-filing meeting
- Formal application request

Application

- Review of formal requirements (e.g. Austrian PoM, sales threshold etc)
- Tax audit for all open years (from the end of the last tax audit up to now)
- Evaluation of tax reliability (might be influenced by the findings of the audit of the last years).

Review

- In case of a positive assessment notice => entry into CCP in the subsequent year

Assessment notice
Any time; no minimum period/no reason required

Discretionary decision, i.e. in case the taxpayer does not comply with his duties, e.g.
- a pre-requisit for the participation is not fulfilled anymore,
- the taxpayer looses its tax reliability or trustworthiness
- no expert opinion on the TCMS or the effectiveness of the TCMS has to be doubtet
Gebhard Furherr, a partner at LeitnerLeitner since 2009, is an auditor, tax advisor as well as a certified and court-appointed expert. After completing his studies at Vienna University of Economics and Business, he worked for the International Bureau of Fiscal Documentation (IBFD) in the Netherlands, as well as in the field of international tax law at two Big Four companies in Vienna.

His main areas of focus are national and international tax law, corporate and group tax law, reorganizations, transaction services and procedural law. He advises companies on Cooperative Compliance Programs and the implementation of Tax Compliance Management Systems (TCMS).

Gebhard Furherr has authored a number of specialist publications and is in demand in his field as a lecturer at seminars and symposiums.
Concept

Benefits

Taxes included

Pre-requisites

Tax Trustworthiness

Tax Compliance Management System (TCMS)

Entry/Application procedure

Exit

Contact person

Locations

beograd
bratislava
budapest
graz
kecskemét
linz
ljubljana
praha
salzburg
sarajevo
wien
zagreb
zürich
sofia