Transfer Pricing Country Summary
Ireland

June 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

Ireland's Finance Act 2010 introduced broad based transfer pricing legislation that reflects the OECD Transfer Pricing Guidelines. Part 35A, Sections 835A to 835H of the 1997 Taxes Consolidation Act contains the domestic law dealing with transfer pricing. The new transfer pricing legislation is applicable to domestic and international related party arrangements and effective from accounting periods commencing on or after 1 January 2011 and in relation to certain arrangements entered into on or after 1 July 2010.

Definition of Related Party

Related Party is defined as:

- one of the persons is participating in the management, control or capital of the other, or the same person is participating in the management, control or capital of each of the 2 persons; and one person is participating in the management, control or capital of another person at any time only if that other person is at that time (i) a company, and (ii) controlled by the first person;
- a company shall be treated as controlled by an individual if it is controlled by the individual and persons connected with the individual;
- a person is connected with an individual if that person is a spouse, ancestor, lineal descendant or sibling of the individual.

Transfer Pricing Scrutiny

In November 2012 the Revenue Commissioner introduced the Transfer Pricing Compliance Review (TPCR) in accordance with the Irish freedom of information laws. The TPCR aims to enhance transparency and compliance with transfer pricing regulations amongst companies in Ireland.

Under the TPCR, a company or corporate group conducts its own review to verify compliance with transfer pricing regulations and also provide the Revenue Commissioner with a compliance assessment of information not regularly included in the normal auditing process.

The review is initiated by the Revenue Commissioner through a written request sent to selected companies. The request asks selected companies to conduct a review of their own compliance with regulations. Companies are asked to focus on the following measures in particular:

- the multinational's group structure;
- a summary of the functions, assets and risks of parties involved;

- the type of transactions entered into by the Irish entity and the identity of the parties involved;
- the pricing structure and methodologies used for involved transactions;
- the details of how the arm's length principle was met.

After the review notification letter has been issued, the company has three months to submit a report stating the outcome of the self-review. The Revenue Commissioner will subsequently issue a post review letter stipulating whether the review is adequate, requires additional details or a discussion with the tax authority.

One option following the TPCR is for the Irish Revenue to carry out a transfer pricing audit. Documentation must be produced in a timely manner. The Irish transfer pricing rules do not specify a particular deadline, but normal practice in a tax audit is to provide documentation within 28 days of request.

Transfer Pricing Penalties

There are no specific transfer pricing penalties. General corporate tax penalties apply including those for failure to submit documentation upon request.

The Irish tax authorities charge penalties for three categories of taxpayer negligence. The categories are careless behavior without significant consequences (3 to 20 percent of tax underpaid), careless behavior with significant consequences (5 to 40 percent) and deliberate behavior (10 to 100 percent).

Under the general corporate tax rules, interest, currently of 0.0219% per day, is payable on underpaid tax.

Advance Pricing Agreement (APA)

Bilateral and multilateral (as a series of linked bilateral) APAs are available. There is no legislation that specifically empowers the Irish Revenue to formally conclude APAs or rulings. In practice, however, it is possible to agree on general principles in advance of a transaction, and the Irish Revenue will adhere to them. No filing fee is charged on APA application.

Following Action 14 of the OECD's Base Erosion and Profit Shifting (BEPS) Project, Ireland began a formal bilateral APA program from 1 July 2016. As part of the material published concurrently the commencement of this program, the Irish Revenue confirmed that they will not enter into unilateral APAs.

Documentation and Disclosure Requirements

Tax Return Disclosures

The annual tax return must be adjusted for non-arm's length transactions.

Documentation Requirements

Section 835F requires that companies must provide such documentation as may be reasonably required to show that their income has been calculated in line with the transfer pricing legislation. Documentation must be prepared on a timely basis. The Irish Revenue has issued a Guidance Note on Transfer Pricing Documentation Obligations to provide assistance.

The Guidance Note provides that the authorities will accept documentation practices that adhere to the EU Code of Conduct on Transfer Pricing Documentation adopted by the EU Council or the OECD Transfer Pricing Guidelines. The Guidance note provides that the relevant documentation must clearly identify:

- associated enterprises;
- the nature and terms of the transactions. Transactions that are clearly of one family may be aggregated provided any significant changes during the period in the nature and the terms of the transactions are recorded;
- the method/s used for pricing of the transactions, including any study of comparables and functional analysis undertaken;
- how the method leads to the arm's length pricing or the transfer pricing adjustment if any, plus how any transfer pricing adjustment was calculated. This will usually include an analysis of market data or other information on third party comparables;
- any budgets, forecasts or other papers containing information relied on when arriving at arm's length pricing or transfer pricing adjustments;
- the terms of the relevant transactions with third parties and associates.

Generally, a separate master file and a local file are not required, however, the information required to be kept on both files should be considered as being reasonably required for the purposes of determining whether the trading income has been computed on an arm's length principle.

Record Keeping

The relevant documentation should be maintained for six years from the end of the transaction or six years from the end of the financial year in which the tax return is filed if the tax return is filed late.

Country-by-Country Reporting (CbCR)

Ireland has implemented Action 13 of the OECD's work on countering BEPS. Multi-National Enterprises with group revenue over EUR 750 million must now make an annual report to the Revenue Commissioners where the Ultimate Parent Entity (UPE) is in Ireland or where a group member is in Ireland and its UPE is in a country that does not require CbCR and no other company has opted to file a CbCR. Finally, an Irish headed sub-group must file the CbCR if its UPE is in a country that does not exchange information with Ireland.

The report must set out details of the income and profits a Group has in each territory together with details that allow Revenue Authorities to assess the likely substance an entity has in each jurisdiction and the activities it carries on there.

Documentation requirements for CbCR reports are based on normal transfer pricing rules. The filing entity must have available the records to show that its CbCR report is correct and complete and records must be kept for six years from the end of the accounting period to which the CbCR relates.

Language for Documentation

The language of the documentation can be either English or Irish.

Small and Medium Sized Enterprises (SMEs)

The transfer pricing legislation provides for an exemption for SMEs from the regime. The determination of the SME is based on the EU Recommendation of 6 May 2003. Accordingly, a group is considered as a SME if it has less than 250 employees and has a turnover of less than EUR 50 million or assets of less than EUR 43 million.

Deadline to Prepare Documentation

Documentation must be prepared before a tax return is submitted and the deadline to submit a tax return is the 23rd of the 9th month following the end of the accounting period.

Deadline to Submit Documentation

Upon request by the tax authority, transfer pricing documentation must be submitted within 16 – 30 days. If a taxpayer does not comply with a request for documents, then the Revenue Commissioners can give a deadline of not less than 21 days for submission of the documents.

Statute Of Limitations

The general rules of assessment are applicable and the time limit is four years from the end of the accounting period in which the tax return is filed. This time limit is lifted if the return does not contain a full and true disclosure of all material facts, although the Irish Revenue only has four years from the end of the accounting period in which the return is filed to begin to make enquiries.

There are no time limits for either assessments or enquiries in cases of fraud or neglect.

Transfer Pricing Methods

The transfer pricing rules do not specify preferred transfer pricing methods. However, the legislation accepts the documentation which is in accordance with OECD Guidelines. Accordingly, the methods as prescribed in the OECD Guidelines as applied to the facts are acceptable to the authorities. The selected transfer pricing method in a given situation should be the one, most appropriate according to the circumstances.

Comparables

There are no guidelines on evaluating comparables. However, the OECD Transfer pricing rules on comparables are relevant. The main focus when evaluating comparables is the commerciality of the transaction in question. There is no practice of using secret comparables.

The general rules of assessment are applicable and the time limit is four years from the end of the accounting period in which the tax return is filed and where that return contains a full and true disclosure of all material facts.