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GLOBAL TRANSFER PRICING SERVICES

# Global Transfer Pricing Review

Ireland

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TAX



# Ireland



## KPMG observation

Transfer pricing legislation was introduced as part of the 2010 Finance Act, effective for accounting periods on or after 1 January 2011 and applicable to trading transactions (not to non-trading activities taxed at a 25 percent rate). Transactions entered into prior to 1 July 2010 are grandfathered, unless the terms and conditions under which they are conducted do change.

The Irish transfer pricing rules generally follow the Organisation for Economic Co-operation and Development (OECD) Guidelines. The Irish transfer pricing regime applies to both cross-border and domestic transactions.

In November 2012, the Irish Revenue announced Transfer Pricing Compliance Reviews (TPCRs) as the primary process to monitor compliance with the transfer pricing regime. Transfer pricing audits may be conducted if a TPCR is not conducted in a satisfactory manner.

Some of the structures established by multinational companies with residency in Ireland may be regarded as primary targets of the OECD's Base Erosion and Profit Shifting (BEPS) initiative. The Irish government has repeatedly declared that it perceives the transfer pricing regulations in Ireland as fully compliant with the OECD Guidelines and that they will remain so. Irish Revenue has not yet taken action in response to the BEPS initiative, but is staffing up its resources to enforce compliance with the existing rules.

## Basic information

### Tax authority name

Office of the Revenue Commissioners.

### Citation for transfer pricing rules

Part 35A, Section 835, Taxes Consolidation Act 1997.

### Effective date of transfer pricing rules

1 January 2011.

### What is the relationship threshold for transfer pricing rules to apply between parties?

The transfer pricing rules will apply if (1) one of the parties participates in the management, control, or capital of the other party, or (2) if both parties fall under the management, control or capital of another party.

A party will have control over another party if it is able to control the affairs of the other party in such a way that they

are conducted in accordance with the wishes of the controlling party by virtue of shareholding, voting power or articles of association.

There is no fixed participation quota or shareholding stated in the regulations.

### What is the statute of limitations on assessment of transfer pricing adjustments?

There are no specific limitations for transfer pricing, but the general rule is 4 years from the year-end, in which tax return is filed.

## Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No.

### What types of transfer pricing information must be disclosed?

Not applicable.

### What are the consequences of failure to prepare or submit disclosures?

Not applicable.

## Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

There is a statutory requirement to prepare and retain supporting transfer pricing documentation for companies not falling under the small and medium enterprise (SME) exemption (a multinational group with less than 250 employees and either a turnover of less than 50 million Euros (EUR) or assets of less than EUR43 million qualifies as

SME, in line with European Union (EU) recommendations) and the tax legislation cross references to the documentation provisions of the OECD Guidelines. No transfer pricing specific penalties apply if documentation is not prepared.

### Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

General tax penalties will apply if transactions are not conducted at arm's length terms. An appropriate transfer pricing study provides the basis to evidence arm's length compliance. Under Ireland's self-assessment system, the burden of proof, in the event of an audit by the Irish tax authorities, will fall on the taxpayer. The burden of proof is not shifted to the tax authorities if the taxpayer has prepared transfer pricing documentation, but the taxpayer is perceived to have fulfilled its obligations to co-operate, provided the transfer pricing documentation is complete and accurate.

### To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

There are no specific deadlines for preparation or submission, other than the TPCR submission deadline, which is 3 months. However, the Irish legislation states that documentation must be prepared on a timely basis. It is best practice that the documentation is prepared at the time the terms of the transaction are agreed upon. In order for a company to be in a position to make a correct and accurate and complete tax return, appropriate transfer pricing documentation should exist at the time the tax return is filed i.e. 9 months after accounts year-end.

### When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes. While there are no specific requirements set down in the legislation, the OECD Guidelines should be followed when preparing a transfer pricing study. The Irish tax authorities have stated that the form and manner that the

documentation takes will be dictated by the facts and circumstances of the transactions and that the costs involved in preparing the documentation should be commensurate with the risk involved. Additionally, if documentation exists in another territory which supports the Irish arrangement, this will also be sufficient from an Irish transfer pricing perspective as long as the documentation is in English.

### Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

### Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

### Is there a priority among the acceptable methods?

No. Ireland follows the OECD Guidelines and the guidance contained within on the determination of the most appropriate method.

### If there is no priority of methods, is there a "best method" rule?

Not applicable.

## Transfer pricing audit and penalties

### When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Documentation should be prepared on a timely basis, but no specific time deadline is outlined. Normal practice in a tax audit is to expect documentation within 28 days of request. If a company is selected for a TPCR, the timeline for submission is 3 months.

### If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

Yes. The standard tax appeal procedures are available.

### If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. No specific transfer pricing penalties are included within the legislation, so the standard interest and general tax penalty provisions will apply. Under general tax penalties provision, interest arises on underpaid tax at a daily rate of 0.0219 percent (equivalent to 7.99 percent per annum). The Irish tax authorities charge penalties for three categories of negligence on the part of the taxpayer. The categories are insufficient care (20 percent of tax underpaid), careless behavior (40 percent) and deliberate behavior (100 percent). These standard penalties can be reduced by co-operation and by disclosure of the taxpayer.

### To what extent are transfer pricing penalties enforced?

It remains to be seen how the Irish tax authorities will enforce penalties to transfer pricing transactions. It is expected that penalties will be levied in the same manner as general tax penalties.

### What defences are available with respect to penalties?

Sufficient transfer pricing documentation.

### What trends are being observed currently?

TPCR have started during 2013. Irish Revenue is in the process of increasing its resources both in terms of staffing and transfer pricing specific databases.

## Special considerations

### Are secret comparables used by tax authorities?

No.

### Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

### Do tax authorities have requirements or preferences regarding databases for comparables?

No.

**What level of interaction do tax authorities have with customs authorities?**

Low.

**Are management fees deductible?**

Yes.

**Are management fees subject to withholding?**

No.

**Are year-end transfer pricing adjustments permitted?**

Yes. The arm's length standard of any adjustments should be explained in the transfer pricing documentation prepared.

**Other unique attributes?**

None.

## Other recent developments

Irish Revenue has recently started enforcing compliance with the arm's length principle by requesting some multinationals to conduct TPCRs. A TPCR means that the taxpayer assesses its compliance with the transfer pricing regulations via a self-review. The result of the self-review is reported to the Irish Revenue, who decides about the further proceedings.

In the TPCR announcement, the Irish Revenue have also stated that if a company wishes to rely on the grandfathering provision as described above, they expect the company to be able to establish that:

1. the relevant agreement envisaged the arrangement or transaction concerned;
2. the relevant agreement provides the price; and
3. the relevant agreement is not merely an agreement for future agreements.

## Tax treaty/double tax resolution

**What is the extent of the double tax treaty network?**

The Irish double tax treaty network is extensive.

**If extensive, is the competent authority effective in obtaining double tax relief?**

Almost always.

**When may a taxpayer submit an adjustment to competent authority?**

There is no specific timing or form for making a Competent Authority request. There is no specific document requirement either.

**May a taxpayer go to competent authority before paying tax?**

No.

## Advance pricing agreements

**What APA options are available, if any?**

Bilateral and multilateral. There is no legislation that specifically empowers the Irish Revenue to formally conclude unilateral 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.

**Is there a filing fee for APAs?**

No.

**Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?**

No.

**Please provide some information on how successful the APA program is and whether there are any known difficulties?**

The Irish tax authorities have been willing to enter into bilateral APA negotiations once a case has been successfully accepted into the APA program of the other jurisdiction. It remains to be seen whether Ireland will formalize its APA procedures.

## Language

**In which language or languages can documentation be filed?**

English and Irish.

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