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Irish Transfer Pricing update

Latest developments and guidance



Irish tax authorities issue guidance on transfer pricing documentation

Following the recent introduction of Irish transfer pricing regulations, the Irish tax authorities have issued guidance on the documentation that is required to be prepared by taxpayers in order to be compliant with the new transfer pricing rules.

While the Irish tax authorities have “not intended to provide a prescriptive list” of the documentation required to comply with the Irish transfer pricing rules, they have set out a comprehensive list of information that must be included in any such documentation. As expected, the Irish tax authorities will accept documentation that has been prepared in accordance with either the OECD Transfer Pricing

Guidelines or the code of conduct adopted by the EU Council under the title “EU Transfer Pricing Documentation”.

Notably, the guidance note states that in order for a company to be in a position to make a complete and correct tax return transfer pricing documentation needs to exist at the time the tax return is filed. This is more onerous than anticipated but is mitigated by the fact that a taxpayer can maintain documentation in a form “of its own choosing”. Additionally where documentation exists in another territory, which supports the Irish arrangement, this will also be sufficient from an Irish transfer pricing perspective.



Overview of the Irish transfer pricing regime

The Irish transfer pricing rules apply to domestic as well as international related party arrangements. In order to fall within the scope of the regime there must be an arrangement between associated parties involving the supply and acquisition of goods, services, money or intangible assets where the terms of the arrangement are set out on or after 1 July 2010 in respect of accounting periods commencing on or after 1 January 2011.

A key feature of the transfer pricing rules is that they only apply to trading transactions where there has been an understatement of Irish profits. The new rules will not apply to small or medium sized enterprises as defined within the EU Commission Recommendation.

What does the legislation currently state on documentation?

The legislation currently provides that companies will need to provide documentation “as may reasonably be required” and that documentation will need to be “prepared on a timely basis”.

What does the guidance note state on documentation?

The guidance note supports the legislative basis and indicates that a company is required to have transfer pricing documentation available for inspection if requested by the Irish tax authorities. The guidance note states that a company can maintain the documentation in a form “of its own choosing” and that where documentation has been prepared by an associated company located in another territory which supports the Irish arrangement this will also be sufficient from an Irish transfer pricing perspective, on the basis that the documentation is in English.

Reference is made to the fact that the purpose of the documentation should be to demonstrate compliance with the transfer pricing rules. 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”. The Irish tax authorities have taken a pragmatic approach and recognise that the introduction of the transfer pricing rules may prove burdensome for some companies and that the cost involved in preparing the documentation should be “commensurate with the risk involved”. As an example, the guidance note states that they would expect complex transactions to have more detailed documentation in place in comparison to simple transactions.

Required documentation

As outlined above, while the Irish tax authorities have “not intended to provide a prescriptive list” of the documentation required to comply with the Irish transfer pricing rules, they have set out a fairly comprehensive list of information that must be included in any such documentation. The “documentation must clearly identify”:

- Associated persons for the purposes of the legislation;
- The nature and terms of transactions within the scope of the legislation;
- The method or methods by which the pricing of transactions were arrived at, including any benchmarking study of comparable data and any functional analysis performed;
- How that method has resulted in arm’s length pricing or where it has not, what adjustments were made and how the adjustment has been calculated;
- Any budgets, forecasts or other papers containing information relied on in arriving at arm’s length terms etc, or in calculating any adjustment;
- The terms of relevant transactions with both third parties and associates.

When should documentation be prepared?

The guidance note states that “it is best practice that the documentation is prepared at the time the terms of the transaction are agreed”. Additionally, the guidance note states that in order “for a company to be in a position to make a correct and complete Tax Return” appropriate transfer pricing documentation should exist at the time the tax return is filed.

While the “best practice” timeframe for the preparation of transfer pricing documentation may be rather more onerous than anticipated based on previous comments from the Irish tax authorities, it is important to bear in mind that there is no requirement for documentation to be kept in a standard form and so it is up to the company to decide on the form of the required documentation. As outlined above, the Irish tax authorities have also confirmed that they will accept documentation prepared “by an associated company...in another jurisdiction”.

The Irish tax authorities have confirmed that transfer pricing documentation must be available for relevant arrangements “that take place in accounting periods beginning on or after 1 January 2011”.

The preparation of documentation will not be limited to a once-off exercise for Irish companies and the Irish tax authorities have emphasised the importance of reviewing documentation on a regular basis “to determine whether pricing remains arm’s length”. It may be appropriate for taxpayers to perform an annual review and update their documentation accordingly.

Transfer pricing adjustment

The transfer pricing rules do not contain any specific penalty provisions and therefore the general corporate tax penalties as provided for within the Irish tax legislation will apply. The Irish tax authorities have clarified that “the quality of the supporting documentation will be a key factor in determining whether the adjustment should be regarded as correcting an innocent error or as being a technical adjustment”.

Confirmation of when documentation will not be required

The Irish tax authorities have confirmed that the documentation requirements will not apply to so-called “grandfathered” arrangements, the terms of which are agreed before 1 July 2010. The guidance note states that an arrangement will qualify for this “transitional treatment” if:

- The terms of the pre 1 July 2010 agreement clearly envisage the transaction; and
- The application of these terms delivers the price of the transaction.

It is important to note that any arrangement entered into prior to 1 July 2010 and which is subsequently revised after 1 July 2010, for instance in cases where a new product or service is added, change to the price etc, that such an arrangement will become ungrandfathered and accordingly will fall within the scope of the Irish transfer pricing rules which will necessitate documentation to be prepared to support these arrangements.

Other points of note

The final matter within the guidance note is in respect of a transfer of a trade from one company to another associated company in the course of a scheme of reconstruction or amalgamation. The Irish tax authorities have confirmed they will “treat an agreement entered into by the transferring company... as having been entered into by the acquiring company”, allowing the arrangement to remain grandfathered after the transfer of the trade and accordingly fall outside the scope of the Irish transfer pricing rules.

The guidelines issued by the Irish tax authorities are contained in Tax Briefing Issue 07 of 2010.

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