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Overview

William Fry Tax Advisors, Taxand Ireland

Taxand Ireland's transfer pricing services include: reviewing global transfer pricing policies in line with international market standards, performing transfer pricing risk reviews as part of the due diligence process and supporting clients through tax audits and negotiation of Advanced Pricing Arrangements ("APA") and Mutual Agreement Procedures ("MAP"). We liaise with and engage external providers for preparation of benchmarking analyses.

General: Transfer Pricing Framework

Transfer pricing legislation in Ireland was first introduced into Irish tax legislation ("TCA 1997") by the 2010 Finance Act.

Ireland's transfer pricing rules are construed in accordance with the OECD's Transfer Pricing Guidelines ("OECD TPG") which Ireland has adopted wholesale and which are legally binding.

Although the Irish transfer pricing rules came into effect in 2011, Irish tax law had always contained provisions to restrict deductions for any expenses incurred by businesses when such expenses were in excess of market value under the circumstances. This measure is applied in parallel to the transfer pricing legislation.

The OECD'S Attribution of Profits to Permanent Establishments, the authorized OECD approach ("AOA") became effective in Ireland from 1 January 2022 with the introduction of Section 25A TCA 1997.

The Irish transfer pricing legislation includes an exemption for small and medium enterprises (SMEs). For these purposes, an SME has fewer than 250 employees, and either has a turnover of less than €50 million or assets of less than €43 million. This is an annual test that is applied at a group level.

Ireland also contains an exemption for certain Irish-to-Irish transactions (Section 835E TCA 1997), this applies where the Irish supplier / lender is providing services on a non-trading basis.

Specific documentation requirements in Ireland (Local File, Master File) became effective from 1 January 2020.

Accepted Transfer Pricing Methodologies

Irish tax legislation is to be construed in accordance with OECD TPG and, accordingly, provides for the transfer pricing methods that are set out therein. Taxpayers should demonstrate why a particular transfer pricing method has been chosen.

Transfer Pricing Methods Overview

Traditional Transaction Methods	• Comparable Uncontrolled Price Method ("CUP") • Resale Price Method • Cost Plus Method
Transactional Profit Methods	• Transactional Net Margin Method ("TNMM") • Profit Split Method
Other Methods	• Use of other methods is allowed, depending on context, e.g. bespoke valuation methods for transfer of intellectual property

The most appropriate method is considered based on the functional analysis and the reliability of information.

One of the most common methods seen in Ireland is the CUP method, especially for intercompany financial transactions.

Transfer Pricing Documentation Requirements

Section 835G TCA 1997 requires that taxpayers should prepare and retain any records that might be necessary for the Irish Tax Authorities ("Revenue") to confirm that the prices charged on transactions to which the transfer pricing rules apply have been agreed on an arm's length basis.

The records required include:

- A "Master File": Where the taxpayer is a constituent entity of a Multinational Enterprise Group ("MNE group"), and where the total revenue of that group in the period is in excess of €250 million; and
- A "Local File": Where the taxpayer is a constituent entity of an MNE group, and where the total revenue of that group in the period is in excess of €50 million.

Master File

In general, the Master File is intended to provide a high-level overview of the Group, including the key products/services, supply chain, key value drivers, identification of the respective roles of Group entities, provide an overview of IP and financing structures. It is not required to be a compendium of detailed facts.

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Local File

A Local File is specific to a country and includes detailed transactional transfer pricing documentation, identifying material related party transactions, the amounts involved in those transactions, and the company's analysis of the transfer pricing determinations they have made with regards to those transactions.

The key components of the Local File are the Functional Analysis and Economic Analysis used to support the arm's length nature of the intercompany transactions.

There is also specific additional information that is required to be included, such as management charts, information regarding APA's/MAP's/rulings, and reconciliations to financial statements.

Relevant Branch Records (RBR)

In addition, the requirement for RBR was introduced for accounting periods commencing on/after 1 January 2022. They are required for Irish branches of foreign companies and contain much of the same information as a Local File.

Transfer pricing documentation should be prepared no later than the filing date of the relevant tax return. In addition, it must be made available to Revenue within 30 days of a written request to do so.

Local Jurisdiction Benchmarks

Irish Revenue guidance outlines that if benchmarking analysis has been included in TP documentation, it also needs to be reasonably contemporaneous, but if there are no material changes to the economic circumstances surrounding the specific transaction and the analysis continues to be relevant to the particular facts and circumstances of the arrangement, then a taxpayer can rely on it for multiple periods.

For a TNMM benchmarking, in general, Irish Revenue will expect a full benchmarking study every 3 years and for the financials of the accepted comparables to be updated or refreshed on an annual basis.

Benchmarking does not have to be based on Irish comparables alone, pan-European comparables may be accepted depending on the specific facts and circumstances. However, if there are specific local factors that clearly differentiate the tested party's geographic market, they should be factored into the benchmarking analysis, where possible.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

APA and BABA are both available in Ireland. However, unlike some other countries, Ireland does not provide a unilateral APA, i.e., an agreement between Revenue and the Irish taxpayer. Therefore, all APAs must be either bilateral or multilateral and involve the foreign tax authorities and the foreign taxpayer.

Transfer Pricing Audits

The Burden of Proof in Transfer Pricing: Theory versus Practice

Burden of proof

Burden of proof under the self-assessment system for the accuracy of information in tax returns lies with the taxpayer. Taxpayers with related party transactions should be able to confirm that the transfer prices have been determined in accordance with the arm's length principle.

Statute of limitations

Section 959AA TCA 1997 provides for a four-year time limit on the making and amending of assessments on chargeable persons. This limit is linked to the chargeable period in which the tax return is delivered. There are certain exceptions provided for in the provision. One such exception is to allow for the making and amending of assessments outside the four-year time limit in the case of bilateral MAPs reached between the competent authority of Ireland and a competent authority of another jurisdiction with which Ireland has a Double Taxation Agreement. This amendment will allow Irish Revenue to amend an assessment to implement the outcome of a bilateral MAP agreement.

Transfer Pricing Penalties

Where a taxpayer fails to provide Revenue with transfer pricing documentation within 30 days of a written request to do so, a fixed penalty of €4,000 will apply. This fixed penalty is increased to €25,000 plus €100 for each date on which the failure continues in circumstances where the taxpayer is required to prepare a local file.

The penalties for non-compliance by branches differ slightly from those imposed on companies. The RBR should be prepared contemporaneously with the branch corporation tax return and provided to Revenue within 30 days of a request. If a taxpayer fails to provide them within 30 days, there is a fixed penalty of €25,000 (and €100 per day until the documentation is provided) for large taxpayers (i.e. taxpayers that are part of a group with consolidated revenue of €50m or more) and €4,000 for other taxpayers.

In addition, where a transfer pricing adjustment results in additional tax due, the transfer pricing legislation provides for protection from tax-geared penalties in circumstances where the taxpayer has fully complied with transfer pricing documentation requirements and demonstrates reasonable efforts were made in applying transfer pricing to the arrangement. This protection from tax-geared penalties does not apply in the case of deliberate behaviour by the taxpayer to under-declare a tax liability.

Local Hot Topics and Recent Updates

In 2024, the Irish Tax Appeals Commission ("TAC"), decided against Revenue in the first landmark transfer pricing decision to be decided in Ireland (59TACD2024). The taxpayer in this case was a software development company which was part of a publicly listed multinational group that offered stock-based incentive schemes to employees of its subsidiary entities and did not have a recharge agreement in place between the parent entity and subsidiaries. The stock-based compensation was in respect of shares in the parent company. Revenue argued that the taxpayer's revenues were understated but did not challenge the TNMM used. The taxpayer attributed an expense value to them in their financial statements in line with accounting standards FRS 102 (being the fair value of the stock-based compensation). The key determining factors to the decision made by TAC was who bore the legal and economic risk and who should earn the profits referrable to the cost. The TAC considered whether the taxpayer was correct to exclude the value attributed to the stock-based compensation from its cost base when calculating the inter-company services fees that it charged to the parent company.

The taxpayer was successful in this appeal. In arriving at their decision, the TAC held that it was correct to exclude the notional value attributed (by FRS 102) to the stock-based compensation from the taxpayer's accounts. This conclusion was based on the fact that the costs of the stock-based compensation were borne by the parent company (rather than the taxpayer) and the OECD guidelines were concerned with the economic costs incurred by the taxpayer (rather than by its parent company).

The decision counterviews the Israeli case of Kontera which had been previously cited as authority in the area of stock-based compensation. This decision represents a key milestone in both domestic and international precedent.

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Documentation threshold

Master file	Group's global annual turnover > €250M
Local file	Group's global annual turnover > €50M
CbCR	Multinational enterprise groups ("MNE Groups") with consolidated group revenue of €750 million or more in the preceding fiscal year

Submission deadline

Master file	30 days upon request from Irish Revenue
Local file	30 days upon request from Irish Revenue
CbCR	To be filed with Irish Revenue within 12 months following the end of the period it relates to

Penalty Provisions

Documentation – late filing provision	€4,000 – €25,000, plus €100 per day until the documentation is provided
Tax return disclosure – late/incomplete/no filing	Penalties for late submission of corporation tax returns include a surcharge and restriction on use of allowances / losses. The surcharge levied is as follows: • 5% of the amount of tax payable up to a maximum surcharge of €12,695 where the return is submitted within two months after the due date; and • 10% of the amount of tax payable up to a maximum surcharge of €63,485 in all other cases. The failure to file a return attracts a fixed penalty of €3,000 on a per return basis. This can be increased to €4,000 where the failure to submit the return continues after the end of the tax year in which the person received the tax return from the Inspector. The filing of incorrect/incomplete returns also attracts a fixed penalty of €4,000.
CbCR – late incomplete/no filing	The penalty for failure to file a CbCR is €19,045 plus €2,535 for each day the failure continues. The penalty for filing an incomplete or incorrect CbC Report / Equivalent CbC Report is €19,045.

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