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# Ireland's Transfer Pricing Rules - Documentation Requirements

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October 2021

The Irish Revenue Commissioners (“**Revenue**”) published updated **transfer pricing guidance** in February 2021 (the “**Guidance**”), which includes an overview on the enhanced transfer pricing documentation requirements which apply for chargeable periods commencing on or after 1 January 2020. In addition to keeping records which demonstrate compliance with the transfer pricing legislation, larger taxpayers will now have to prepare a ‘master file’ and ‘local file’.

The Guidance follows updated OECD Guidelines published in July 2017 which includes further information on the transfer pricing documentation requirements (the “**OECD Guidelines**”).

This article provides a summary of the enhanced documentation requirements envisaged by the Guidance.

### Scope of the transfer pricing rules

The scope of Ireland’s transfer pricing rules has been greatly expanded as a result of the changes in Finance Act 2019, as a result of which practically all arrangements (including capital transactions with a value exceeding €25million) are within the scope of the transfer pricing rules (see our more detailed article [here](#)).

Further, the rules apply to an “arrangement” which is defined broadly to include any transaction, action, course of action, course of conduct, scheme or plan, agreement, arrangement of any kind, understanding, promise or undertaking, whether express or implied and whether or not it is, or is intended to be, legally enforceable. Therefore, it is not necessary for an arrangement to be in the form of a written contract for it to be within the scope of the rules.

### Transfer pricing documentation – General rule

A taxpayer must prepare, and have available, such records as may reasonably be required to demonstrate that their profits, gains or losses have been computed in accordance with transfer pricing rules<sup>1</sup>.

While much of the required information will depend on the facts and circumstances in each case, the Guidance provides that the following details should be included:

- the persons between whom the arrangement is made;
- the nature of the arrangement;
- the transfer pricing methodology applied;
- how the arm’s length price was determined based on the methodology and any adjustments required;
- budgets, forecasts and any other documentation relied upon to determine the arm’s length terms / necessary adjustment; and
- the terms of any relevant transactions.

## Master file requirement

Taxpayers forming part of a multinational group of enterprises (an “**MNE Group**”) with a total consolidated global revenue at or above €250m in the chargeable period must prepare a Master File.

The OECD Guidelines described the master file as “a *global report containing certain information on the MNE’s group as a whole*”. The Guidance and OECD Guidelines set out a non-exhaustive list of information which must be included in the master file, which includes: the MNE Group’s organisational structure; a description of the MNE’s business including important drivers of business profit; the MNE’s intangibles; and the MNE’s financing activities.

## Local file requirement

Taxpayers must prepare a local file where the following conditions are satisfied:

- i. the Relevant Person forms part of an MNE Group; and
- ii. the total consolidated global revenue of the MNE Group is, or is likely to be, at or above 50m.

The Guidance notes that the local file “is *specific to the Irish operations, identifying related party transactions with associated persons in different countries, the amounts involved in those transactions, and the company’s analysis of the transfer pricing determinations they have made with regard to those transactions*”.<sup>2</sup>

The local file must include details showing how the transfer pricing policy was applied, a reconciliation with the financial results recorded on the income statement of the company and an explanation as to how the consideration in respect of each arrangement complies with the arms’ length requirements.

### Simplification measures

The Guidance provides for certain simplification measures. For example:

- where there are multiple Irish companies in the MNE Group, a consolidated ‘country file’ can be prepared for all Irish entities instead of an individual local file for each entity. However, it is important to be aware that entity level financial information, as opposed to consolidated financial information, is required.
- counter-party documentation may be acceptable, but may need to be supplemented as necessary to ensure that all relevant details from an Irish perspective have been included.
- Revenue will accept documentation prepared and stored outside Ireland where the documentation has been prepared within the filing due date and provided to Revenue on request.

## Frequency of review

The Guidance notes that transfer pricing documentation must be reviewed regularly and that the information showing how the transfer pricing policy was actually applied in each period should be updated annually. However, the Guidance also acknowledges that the content of transfer pricing documentation, where the facts and circumstances remain materially unchanged, may be carried forward from year to year.<sup>3</sup>

However, the Guidance does note that Revenue will expect a full benchmarking study every three years for Transaction Net Marginal Method benchmarking and the financials of the accepted comparables must be updated or refreshed on an annual basis.

## Intercompany debt balances

In relation to intercompany debt balances, the Guidance acknowledges that where, despite every reasonable effort having been made, it is not possible to trace the origin of each movement of an intercompany balance, the balance should be treated as arising from the earliest date for which reliable information is available. However, the Guidance makes clear that all movements in intercompany balances from 1 January 2020 (or the first day of the chargeable period commencing on or after 1 January 2020) must be tracked and transfer pricing rules applied to the computation of any non-trading income arising on this basis.<sup>4</sup>

## Documentation requirements for pre-1 July 2010 arrangements

Arrangements agreed before 1 July 2010 have been brought within the scope of transfer pricing rules for chargeable periods commencing on or after 1 January 2020. These arrangements are subject to the same documentation requirements as discussed above. However, where the supplier and the acquirer in relation to a pre-1 July 2010 arrangement are qualifying relevant persons and the terms and conditions of the arrangement have not changed since 1 July 2010, the documentation requirements will not apply. In order to rely on this exclusion, companies must be able to demonstrate that there has been no change in the terms and conditions of the arrangement since 1 July 2010.

## Timeline and Penalties

The documentation must be prepared no later than the filing date for the return for the chargeable period and must be made available within 30 days of a written request from a Revenue officer.

Fixed penalties apply where a Relevant Person fails to provide transfer pricing documentation within 30 days of a written request from Revenue. The fixed penalty is €4,000. Where, however, the Relevant Person is required to prepare a local file for the chargeable period, the fixed penalty is increased to €25,000 plus €100 per day the failure continues.

Where the transfer pricing documentation requirements are satisfied, certain protections from penalties will apply where a transfer pricing adjustment is required. Where such adjustment results in additional tax falling due, the taxpayer will be protected from additional tax-geared penalties where they have prepared and provided the transfer pricing documentation within the specified timeframe and the records provided are accurate and demonstrate a reasonable effort to comply with the requirements in respect of setting the consideration under the relevant arrangement. However, such protection from tax-geared penalties will only apply to transfer pricing adjustments falling within the ‘careless behaviour’ category of default as opposed to the ‘deliberate behaviour’ category.

## How can we help?

If you are interested in discussing the application of the transfer pricing documentation requirements to any transaction, or to discuss approaches on keeping records which best demonstrate compliance with transfer pricing legislation, please do not hesitate to reach out to your usual Matheson contact.

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1 Section 835G(2) TCA 1997

2 Tax and Duty Manual: Part 35A-01-01, Section 8.6

3 Tax and Duty Manual: Part 35A-01-01: Section 8.4

4 Tax and Duty Manual: Part 35A-01-01: Section 8.10

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