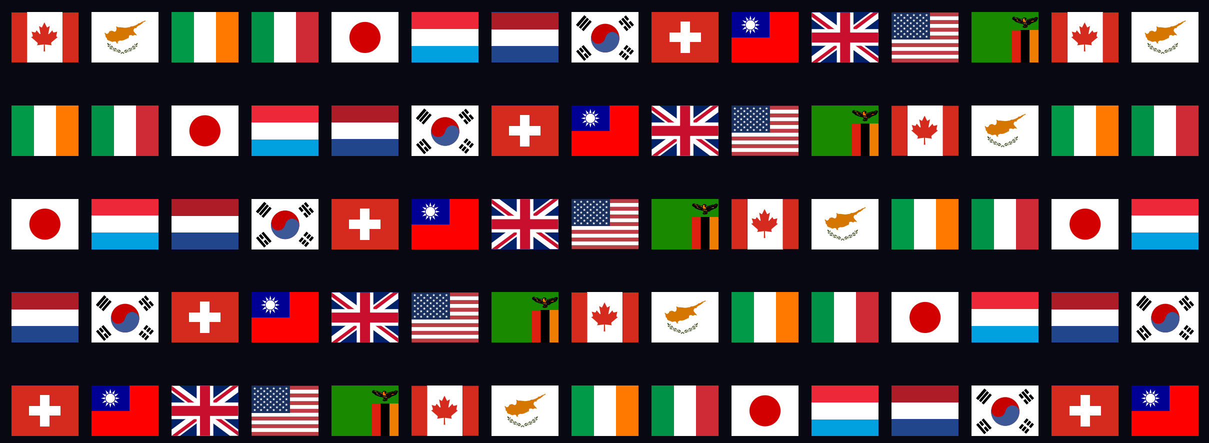
TRANSFER PRICING

Ireland



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Transfer Pricing

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Quick reference guide enabling side-by-side comparison of local insights into principal legislation; enforcement authority; role of OECD Transfer Pricing Guidelines and BEPS project; transfer pricing methods; documentation and reporting; adjustments and settlement; relief from double taxation; advance pricing agreements; special topics, such as recharacterization, comparables, secondary adjustments, non-deductible intercompany payments, anti-avoidance, location savings, branches and permanent establishments, exit charges, and temporary exemptions and reductions; and recent trends.

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OVERVIEW

Principal legislation

Identify the principal transfer pricing legislation.

The primary Irish transfer pricing legislation is contained in Part 35A of the Taxes Consolidation Act 1997, which applies to accounting periods commencing on or after 1 January 2011 for transactions the terms of which were agreed on or after 1 July 2010. The transfer pricing legislation was significantly updated with effect from 1 January 2020, and the grandfathering of pre-1 July 2010 transactions has been abolished.

Law stated - 23 June 2023

Enforcement agency

Which central government agency has primary responsibility for enforcing the transfer pricing rules?

The Revenue Commissioners deal with transfer pricing and all other tax matters. The Irish competent authority team within the Revenue Commissioners is responsible for tax matters under Ireland's treaties. There are transfer pricing specialists and economists within the Revenue Commissioners dealing with transfer pricing matters.

Law stated - 23 June 2023

OECD guidelines

What is the role of the OECD Transfer Pricing Guidelines?

The 2022 OECD Transfer Pricing Guidelines are incorporated into Irish tax legislation, which states that the transfer pricing rules are to be construed in such a way as to ensure, as far as practicable, consistency with the OECD Transfer Pricing Guidelines. Consequently, Irish law does not go into any detail about how to apply the arm's-length principle. New and revised versions of the OECD Transfer Pricing Guidelines are incorporated into domestic Irish law by legislative amendment. Most recently, the 2022 edition of the OECD Transfer Pricing Guidelines is the version to be applied with effect from chargeable periods commencing on or after 1 January 2023.

Law stated - 23 June 2023

Covered transactions

To what types of transactions do the transfer pricing rules apply?

The transfer pricing rules apply, in a domestic and cross-border context:

- to arrangements involving the supply and acquisition of goods, services, money, assets (including intangible assets) or anything else of commercial value;
- where, at the time of the supply and acquisition, the supplier and acquirer are associated; and
- where the profits or gains or losses arising from the relevant activities are within the charge to tax of either the supplier or the acquirer or both.

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Previously, transactions undertaken other than in the course of a trade (taxable in Ireland at 12.5 per cent) were not subject to the transfer pricing rules. With effect from 1 January 2020, the transfer pricing rules apply to trading, non-trading and capital transactions. This is of particular relevance to interest-free loans issued by an Irish company and transactions involving the purchase and sale of capital assets, both of which are now subject to the Irish transfer pricing rules.

Where an arrangement between associated entities is made otherwise than at arm's length, an adjustment may be made where the Irish taxpayer has understated trading income or overstated trading expenses.

An arrangement is defined very broadly and includes any agreement or arrangement of any kind (regardless of whether it is, or is intended to be, legally enforceable). Two persons may be associated directly or indirectly by virtue of participation in the management, control or capital of the other. Broadly speaking a company is deemed to have control of another person when it can be ensured that the affairs of the first-mentioned company are conducted in accordance with the wishes of that person.

The transfer pricing rules do not apply to small or medium-sized enterprises – broadly, enterprises with fewer than 250 employees and either a turnover of less than €50 million or assets of less than €43 million on a group basis. The transfer pricing rules will in due course apply to medium-sized enterprises in respect of transactions where the consideration payable exceeds €1 million; however, commencement of this provision remains subject to a Ministerial Order. The 2021 Update to Ireland's Corporation Tax Roadmap noted that given the uncertainties and challenges faced by SMEs as a result of both Brexit and covid-19, there are currently no plans to extend the transfer pricing rules in this matter.

Previously, arrangements that were agreed before 1 July 2010 and remain unchanged were not subject to the transfer pricing rules; however, this grandfathering of pre-1 July 2010 transactions has been abolished.

Law stated - 23 June 2023

Arm's-length principle

Do the relevant transfer pricing rules adhere to the arm's-length principle?

Yes.

Law stated - 23 June 2023

Base erosion and profit shifting

How has the OECD's project on base erosion and profit shifting (BEPS) affected the applicable transfer pricing rules?

Ireland participated fully in the OECD's BEPS project and has implemented several best practice recommendations to date.

New and revised versions of the OECD Transfer Pricing Guidelines must be incorporated into Irish law by legislative amendment. Ireland's transfer pricing legislation specifically incorporates the 2022 edition of the OECD Transfer Pricing Guidelines (including Actions 8 to 10 of the BEPS project), which incorporates the OECD's Revised Guidance on the Transactional Profit Split Method, Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles and Transfer Pricing Guidance on Financial Transactions.

Law stated - 23 June 2023

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PRICING METHODS

Accepted methods

What transfer pricing methods are acceptable? What are the pros and cons of each method?

The transfer pricing rules do not specify acceptable or preferred transfer pricing methods. However, the legislation requires the transfer pricing rules to be construed in such a way as to ensure, as far as practicable, consistency with the OECD Transfer Pricing Guidelines. Therefore, any transfer pricing method that is selected and applied in accordance with the OECD Transfer Pricing Guidelines should be acceptable from an Irish transfer pricing perspective.

In accordance with the OECD Transfer Pricing Guidelines, the taxpayer should select the methodology that is most appropriate for the particular transaction.

The following transfer pricing methods are acceptable in Ireland:

- the comparable uncontrolled price method;
- the cost-plus method;
- the resale price method;
- the transactional net margin method; and
- the profit split method.

While all of the above methods are accepted by the Revenue Commissioners, there is no specific commentary published that articulates the Revenue Commissioners' view on each of the methods. However, the Revenue Commissioners are showing greater interest in two-sided methods in practice, or at the very least in reviewing the method applied on both sides of a transaction.

Law stated - 23 June 2023

Cost-sharing

Are cost-sharing arrangements permitted? Describe the acceptable cost-sharing pricing methods.

Cost-sharing arrangements are permitted. Intragroup cost-sharing arrangements should be implemented in a manner consistent with the OECD Transfer Pricing Guidelines. Therefore, the conditions applying to the cost-sharing arrangement should be consistent with the arm’s-length principle and should be adequately documented.

Law stated - 23 June 2023

Best method

What are the rules for selecting a transfer pricing method?

Transfer pricing methods should be selected in accordance with the OECD Transfer Pricing Guidelines. There are no preferred methods prescribed by the transfer pricing rules. Therefore, traditional transaction methods and transactional profit methods may be used, but the selection of a transfer pricing method should always aim at finding the most appropriate method given the particular factual circumstances.

Law stated - 23 June 2023

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Taxpayer-initiated adjustments

Can a taxpayer make transfer pricing adjustments?

Where the transfer pricing adjustment arises in respect of an obligation to make a payment to a connected person outside Ireland, as a result of an adjustment to the profits of that connected person, then an adjustment may only be taken in Ireland by way of a correlative relief application to the Irish competent authority.

Transfer pricing adjustments made in other situations (eg, as a year-end true-up) are generally acceptable as long as they comply with the arm's-length standard.

Law stated - 23 June 2023

Safe harbours

Are special 'safe harbour' methods available for certain types of related-party transactions? What are these methods and what types of transactions do they apply to?

The Revenue Commissioners have published guidelines confirming the availability of a safe harbour for low-value intragroup services that apply for periods commencing on or before 1 January 2020. Where the safe harbour applies, the Revenue Commissioners will accept a markup of 5 per cent of the taxpayer's relevant cost base without the need for a benchmarking analysis. The safe harbour is largely based on the guidance contained in section D of Chapter VII of the OECD Transfer Pricing Guidelines and for periods commencing after 1 January 2020 these guidelines should be applied.

In addition, the transfer pricing rules do not currently apply to small or medium-sized enterprises.

Law stated - 23 June 2023

DISCLOSURES AND DOCUMENTATION

Documentation

Does the tax authority require taxpayers to submit transfer pricing documentation? Regardless of whether transfer pricing documentation is required, does preparing documentation confer any other benefits?

For accounting periods commencing before 1 January 2020, there was no standard or required form of transfer pricing documentation. However, the EU Council Code of Conduct, the EU Transfer Pricing Documentation and Chapter V of the OECD Transfer Pricing Guidelines are considered good practice. Documentation should be available at the time the relevant tax return is made, although it is best practice that the documentation is prepared at the time of the transaction in question.

A taxpayer is not obliged to submit transfer pricing documentation unless requested by the Revenue Commissioners. However, the taxpayer is obliged to retain and have available for inspection sufficient documentation and records to demonstrate its compliance with the transfer pricing rules. The records must be prepared in a timely manner and must demonstrate that the taxpayer's relevant income has been computed in accordance with the transfer pricing rules. The records must be prepared in English or Irish in written form or by means of any electronic, photographic or other process permitted for accounting records. The records must be retained for a period of at least six years after the completion of the relevant transaction to which they relate.

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For accounting periods commencing on or after 1 January 2020, the documentation requirements include an obligation to make available a master file and a local file in accordance with the OECD base erosion and profit shifting (BEPS) process and Chapter V of the OECD Transfer Pricing Guidelines, including the requirements of Annex I and Annex II to Chapter V. A master file and local file are not required for transactions agreed before 1 July 2010 and unchanged since that date. The documentation must be prepared at the time the taxpayer files the corporation tax return for the period. If requested, the documentation must be provided to the Revenue within 30 days.

A taxpayer who fails to submit documentation when requested by the Revenue Commissioners may be liable to a penalty. The Revenue Commissioners can apply to the High Court of Ireland for a court order to compel a taxpayer to submit records or documentation.

Taxpayers are obliged to retain such records and documentation that enable true returns to be made under the self-assessment system of corporation tax compliance. A failure to do so may result in the taxpayer incurring penalties. In addition, a comprehensive and robust system of document and record retention will strengthen a taxpayer's position in any engagements with the Revenue Commissioners. For example, a record of the transfer pricing analysis that was carried out should be sufficient to show that reasonable care has been taken and should, therefore, mitigate tax-geared penalties in the event of underpayment.

Taxpayers must have available records as may reasonably be required for the purposes of determining whether the trading income has been computed on an arm's-length basis. Irish tax legislation is not prescriptive as to the form of that documentation. The Revenue Commissioners have published guidance on documentation requirements. The key points noted in the Revenue Commissioners' guidance are as follows.

The extent of documentation depends on the facts. The cost and administrative burden of preparing documentation should be commensurate with the risk involved. For example, it would be expected that complex and high-value transactions would generally require more detailed analysis and related documentation than simple, easily understood and comparable, high-volume transactions.

The quality of the documentation will be a key factor in determining whether an adjustment on audit should be regarded as correcting an innocent error or as being a technical adjustment. The quality of the documentation will depend on its suitability for purpose. Again, for complex high-value transactions, the benchmark for what represents quality documentation will be higher.

Law stated - 23 June 2023

Country-by-country reporting

Has the tax authority proposed or adopted country-by-country reporting? What are the differences between the local country-by-country reporting rules and the consensus framework of Chapter 5 of the OECD Transfer Pricing Guidelines?

Country-by-country (CbC) reporting applies to fiscal years beginning on or after 1 January 2016. The Irish legislative framework largely follows the OECD BEPS Action 13 proposal. However, the Irish approach departs from the OECD proposal in respect of secondary reporting obligations. In Ireland, a constituent entity that is neither an ultimate parent entity nor a surrogate parent entity is obliged to request information from its ultimate parent entity to complete a full CbC report. If the ultimate parent entity refuses or fails to provide sufficient information to enable the constituent entity to file a full CbC report, the constituent entity is obliged to notify the Revenue Commissioners of that refusal and file an 'equivalent country-by-country report'. The equivalent country-by-country report contains details of the filing constituent entity and its subsidiaries only. Failure by the constituent entity to request the information from the ultimate parent entity will result in penalties for the constituent entity. There are no penalties if the constituent entity requests the information and that request is refused.

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Ireland transposed the EU public Country-by-Country Reporting Directive, which entered into force in December 2021 within the transposition deadline of the end of June 2023. With effect from 22 June 2023, the Irish public country-by-country tax reporting regulations require multinational enterprises with turnover exceeding €750 million in each of the last two consecutive financial years to publicly disclose certain corporate tax information. The regulations apply for the first financial year on or after 22 June 2024, with 2025 being the first potential year for reporting and publication in 2026.

Law stated - 23 June 2023

Timing of documentation

When must a taxpayer prepare and submit transfer pricing documentation?

For accounting periods commencing before 1 January 2020, the legislation required records and documentation to be maintained in a timely manner on a continuous and consistent basis. Best practice dictates that all documentation should be prepared contemporaneously.

For accounting periods commencing on or after 1 January 2020, the legislation requires that the records and documentation should be available at the time that the relevant corporation tax return is due to be filed (typically eight months and 21 days after the year-end).

Taxpayers are not obliged to submit transfer pricing documentation until they are requested to do so by the Revenue Commissioners. The Revenue Commissioners may request documentation to be submitted within 30 days. If a taxpayer fails to comply with a request for documents, the Revenue Commissioners may serve a demand on the taxpayer seeking the relevant documents within a period of not less than 21 days.

Law stated - 23 June 2023

Failure to document

What are the consequences for failing to submit documentation?

A taxpayer who fails to submit the relevant documentation within the time period prescribed in the notice may be liable to a penalty of €4,000. A failure to deliver a local file is liable to a penalty of €25,000 plus €100 per day that the failure to deliver continues.

Law stated - 23 June 2023

ADJUSTMENTS AND SETTLEMENT

Limitation period for authority review

How long does the tax authority have to review an income tax return?

Where a taxpayer has delivered a return containing a full and true disclosure of all material information, the Revenue Commissioners may not make an assessment or an amendment to an assessment after the end of four years commencing at the end of the tax year in which the return is filed. Unless and until a full and true return has been filed, the four-year time limit does not begin to run. The Revenue Commissioners may raise an assessment at any time where they have reasonable grounds for suspecting fraud or neglect.

Law stated - 23 June 2023

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Rules and standards

What rules, standards or procedures govern the tax authorities' review of companies' compliance with transfer pricing rules? Does the tax authority or the taxpayer have the burden of proof?

When transfer pricing rules were initially introduced in Ireland, a collaborative approach was adopted by the Revenue Commissioners in respect of reviewing what transfer pricing models and methods Irish taxpayers were using within their frameworks. This approach was implemented by means of the Transfer Pricing Compliance Review (TPCR) programme, where taxpayers were selected on a risk assessment basis to conduct a self-review on their transfer pricing for a specified period.

Initially, the TPCR programme operated smoothly and allowed Irish taxpayers and the Revenue Commissioners to work together without the need for, or the pressure of, an audit. However, in recent years, the Revenue Commissioners have adopted a more investigative approach to reviewing transfer pricing compliance. This is a marked departure from the collaborative stance that the Revenue Commissioners adopted in previous years in respect of such investigations. As a result, TPCRs were replaced by aspect queries and formal audits to review a corporate taxpayer's transfer pricing policies.

The Revenue Commissioners' Transfer Pricing Unit (TPU) was established to review and adjust Irish taxpayers' transfer pricing policies where necessary. A TPU review typically begins by way of an aspect query, which is regarded as a targeted intervention for the purpose of checking a particular risk that is shown by the Revenue Commissioners' risk review system. The aspect query mirrors the audit process, but aspect queries are not regarded as audits. Despite this, aspect queries typically develop into more serious investigations that ultimately result in transfer pricing adjustments being made.

In 2022, the Revenue Commissioners published a revised Code of Practice for Revenue Compliance Interventions (the Code). It came into effect on 1 May 2022 and is a total replacement for its predecessor, the 2019 code of conduct. Compliance interventions made prior to 1 May 2022 will continue under the 2019 version of the code. The Code sets out a new Compliance Intervention Framework that provides a graduated response to taxpayer behaviour ranging from the provision of voluntary opportunities to correct any mistakes identified to the imposition of criminal penalties in cases of serious fraud or evasion. The new framework contains three graduated compliance intervention levels: Level 1, Level 2 and Level 3. Aspect queries have been removed from the new framework and are replaced by 'Risk Reviews' under Level 2 of the framework. Transfer pricing interventions fall under Level 2 interventions and TPCRs fall under Level 1 interventions.

A transfer pricing audit takes place in the same way as a corporation tax audit. Similarly, audits commenced from 1 May 2022 are governed by the updated version of the Code. The Code sets out how the Revenue Commissioners conduct their audits and ensures that the audits are implemented in an efficient, professional and courteous manner. The Code also includes details on the audit and how the audit settlement procedure operates (ie, interest and penalties).

Under Ireland's self-assessment system, the taxpayer generally bears the burden of proving compliance in the event of an audit. Under Irish legislation, the Revenue Commissioners exercise broad rights of review with regard to review of compliance with transfer pricing rules in Ireland.

Law stated - 23 June 2023

Disputing adjustments

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If the tax authority asserts a transfer pricing adjustment, what options does the taxpayer have to dispute the adjustment?

A taxpayer can appeal a transfer pricing assessment to the Tax Appeals Commission at first instance. The decision of an Appeal Commissioner may be appealed on a point of law to the High Court, the Court of Appeal and the Supreme Court (in circumstances where the Supreme Court decides to exercise its appellate jurisdiction in circumstances specified by the Constitution).

Procedural defects in the Revenue Commissioners' conduct may be challenged by way of judicial review.

Where the transfer pricing adjustment results in double taxation, the taxpayer may present the case to the Irish competent authority for relief pursuant to the mutual agreement procedure article of the relevant double tax agreement.

Law stated - 23 June 2023

RELIEF FROM DOUBLE TAXATION

Tax-treaty network

Does the country have a comprehensive income tax treaty network? Do these treaties have effective mutual agreement procedures?

Ireland currently has an extensive network of 74 effective double tax agreements (DTAs), including most major trading nations. The DTAs generally contain an article providing for a mutual agreement procedure (MAP).

Law stated - 23 June 2023

Requesting relief

How can a taxpayer request relief from double taxation under the mutual agreement procedure of a tax treaty? Are there published procedures?

The Revenue Commissioners have published updated guidelines on the procedure for making a MAP request. To activate the MAP, a taxpayer must apply to the Revenue Commissioners in writing, setting out the details of its case. The written MAP request must include the following information:

- identity (eg, name, address, tax identification number or birth date, contact details) of the taxpayers covered in the MAP request and of the other parties to the relevant transactions;
- details of the relationship between the taxpayer and the other parties to the relevant transactions;
- the legal basis for the request (ie, the specific tax treaty or EU Arbitration Convention (or both) including the provisions of the specific articles that the taxpayer considers is not being correctly applied by either one or both contracting states (and to indicate which state and the contact details of the relevant persons in that state));
- facts and circumstances of the case (including any documentation to support these facts such as financial statements and intercompany legal agreements, the taxation years or periods involved and the amounts involved, in both the local currency and foreign currency);
- an analysis of the issues involved (supported with relevant documentation, for example, tax assessment notices, tax audit report or equivalent leading to the alleged double taxation, evidence of tax paid (where applicable)), including:
    - the taxpayer's interpretation of the application of the specific treaty provisions, to support its basis for making

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    - a claim that the provision of the specific tax treaty is not correctly applied by either one or both contracting states; and
    - an explanation by the taxpayer why it considers that the principles set out in article 4 of the EU Arbitration Convention have not been observed;
- the request should state whether the issues presented in the MAP request have been previously dealt with, for example, in an advance ruling, APA, settlement agreement or by any tax tribunal or court. This includes details of any appeals and litigation procedures initiated by the taxpayer or the other parties to the relevant transactions. A copy of any such rulings, agreements or any court decisions concerning the case should be provided;
- any other information or documentation requested by the competent authority. Responses to requests for additional information should be complete and submitted within the time stipulated in the request for such information or documentation;
- an undertaking that the taxpayer shall respond as completely and quickly as possible, providing wholly accurate and complete information, to all reasonable and appropriate requests made by a competent authority and have documentation at the disposal of the competent authorities; and
- confirmation of whether the MAP request was also submitted to the competent authority of the other contracting state – if so, the MAP request should make this clear, together with the date of such submission, the name and the designation of the person or the office to which the MAP request was submitted. A copy of that submission (including all documentation filed with that submission) should also be provided unless the content of both MAP submissions are the same.

Law stated - 23 June 2023

When relief is available

When may a taxpayer request assistance from the competent authority?

A taxpayer should request assistance from the Irish competent authority as early as possible and in advance of the applicable time limitation.

The time limit laid down by the OECD Model Convention for presenting a MAP request is three years from the first notification of the action resulting in potential double taxation. In practice, the majority of Ireland's DTAs include this three-year time limit, although some DTAs provide for a two-year limit or no time limit. The EU Arbitration Convention may also provide a useful means of solving disputes.

In the absence of a specified time limit, the domestic legislation stipulating the time limit for claiming a repayment of tax may apply, giving a period of four years from the end of the relevant accounting period to apply for a MAP request. However, some of Ireland's DTAs, such as the US–Ireland DTA, provide that the MAP shall be available notwithstanding domestic time limits.

The MAP is generally available irrespective of any domestic remedies available, and it may be initiated before, during or after litigation, but if initiated while such litigation is ongoing, the litigation would generally be suspended.

Law stated - 23 June 2023

Limits on relief

Are there limitations on the type of relief that the competent authority will seek, both generally and in specific cases?

There are generally no limitations on the type of relief the Revenue Commissioners may seek.

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Law stated - 23 June 2023

Success rate

How effective is the competent authority in obtaining relief from double taxation?

The Irish competent authority is generally effective in ensuring that a taxpayer obtains relief from double taxation. Typically, the Irish competent authority is asked to engage in a MAP, or the Revenue Commissioners are asked to give correlative relief, for a transfer pricing adjustment raised in another jurisdiction. The Irish competent authority and the Revenue Commissioners will endeavour to ensure that the taxpayer has sought to vigorously defend its position, and that ultimately, any settlement represents a robust and fair application of the OECD Transfer Pricing Guidelines.

In 2022, a total of 28 MAP transfer pricing cases were initiated and 17 cases were closed; resulting in an ending inventory of 77 MAP transfer pricing cases as at 31 December 2022.

Law stated - 23 June 2023

ADVANCE PRICING AGREEMENTS

Availability

Does the country have an advance pricing agreement (APA) programme? If so, is the programme widely used? Are unilateral, bilateral and multilateral APAs available?

Ireland introduced a formal bilateral APA programme that became effective on 1 July 2016. The APA programme replaces the Revenue Commissioners' ad hoc approach to agreeing APAs and provides for the initiation by taxpayers of APAs in Ireland.

Ireland actively participates in bilateral APAs, but will not generally conclude unilateral APAs. Where the relevant issues involve more than two tax jurisdictions, the Revenue Commissioners will consider entering into a series of bilateral APAs to deal with multilateral situations.

In 2022, the Revenue Commissioners received requests for 12 APAs, three cases were concluded and one case was withdrawn; resulting in an ending inventory of 54 APAs in process as at 31 December 2022.

Law stated - 23 June 2023

Process

Describe the process for obtaining an APA, including a brief description of the submission requirements and any applicable user fees.

A company's access to the APA programme is subject to the terms of the mutual agreement procedure article of the relevant double tax agreement (DTA). An application for an APA may be made by a company that is tax-resident in Ireland or by a permanent establishment of a non-resident company.

The Revenue Commissioners adhere to the detailed guidelines for concluding APAs that are contained in the Annex to Chapter IV: Advance Pricing Arrangements of the OECD Transfer Pricing Guidelines. All bilateral APAs are negotiated on the basis of identifying an arm's-length remuneration for the transactions covered by the APA, and, in each case, the transfer pricing method applied will be in accordance with one of the methodologies contained in Chapter II of the OECD Transfer Pricing Guidelines.

In addition, when negotiating a bilateral APA with an EU member state, the Revenue Commissioners will adhere to the

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best practices for the conduct of APA procedures, which are set out in the Guidelines for Advance Pricing Agreements within the EU, which were published by the EU Joint Transfer Pricing Forum.

The APA programme involves the following five stages:

- pre-filing: the pre-filing meeting will enable the parties to establish whether an APA is appropriate and will facilitate a discussion of the relevant issues (ie, the transactions involved, proposed transfer pricing methodology etc);
- formal application: the formal APA application will require submission of information, including an executive summary, details on the company background, industry analysis, the covered transactions, functional analysis, economic analysis (covering the proposed methodology, search for comparables and any adjustments), financial information and details of any related audit enquiries;
- evaluation and negotiation: the Revenue Commissioners will formulate their view based on a detailed evaluation of all information submitted. The Revenue Commissioners will then enter into negotiations with the relevant competent authority to resolve any differences arising, with the objective that one agreed set of terms and conditions can be provided to the taxpayer;
- agreement: where an agreement is reached, the Revenue Commissioners will notify the taxpayer in writing of the agreed terms and conditions within 30 days. If the taxpayer accepts the agreed terms, the Revenue Commissioners will liaise with the other competent authority to finalise the APA. If the agreed terms are not accepted, the Revenue Commissioners will consult with the other competent authority regarding modification where possible; and
- annual reporting: the taxpayer will be obliged to file an annual report with the Revenue Commissioners detailing how it has complied with the terms of the APA. The transfer pricing issues covered by the APA will not be subject to audit adjustments by the participating tax authorities, provided the terms and conditions of the APA are consistently satisfied.

The Irish competent authority should receive the same information as the other competent authority or authorities. There are no user fees payable to the Revenue Commissioners.

Law stated - 23 June 2023

Time frame

How long does it typically take to obtain a unilateral and a bilateral APA?

It will typically take 18 to 24 months to conclude a bilateral APA.

Law stated - 23 June 2023

Duration

How many years can an APA cover prospectively? Are rollbacks available?

Typically, APAs cover three to five years, but the Revenue Commissioners will consider other fixed periods subject to the agreement of the other tax administration. However, in no case will the Revenue Commissioners agree to a period that extends more than five years beyond the date of agreement of the bilateral APA with the competent authority of the other tax administration. Rollbacks are available.

Law stated - 23 June 2023

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Scope

What types of related-party transactions or issues can be covered by APAs?

The APA programme will apply to complex transfer pricing issues only, where the appropriate application of the arm's-length principle is in doubt or there is a significant risk of double taxation. The Revenue Commissioners list a number of factors that indicate the appropriateness of a particular matter for an APA, including:

- significant doubt exists over the appropriate methodology or whether a bespoke methodology is being applied;
- the application of the methodology is complex or requires complex calculations;
- reliable comparables are not readily available or require significant and complex adjustments or both; and
- the transaction is real (ie, not hypothetical) and is not expected to change throughout the duration of the APA.

Law stated - 23 June 2023

Independence

Is the APA programme independent from the tax authority's examination function? Is it independent from the competent authority staff that handle other double tax cases?

APA negotiations are typically handled by the competent authority team, which handles double tax cases under a DTA. This team is separate from the Revenue Commissioners' case officer assigned to that taxpayer. The Revenue Commissioners highlighted the importance of objectivity and independence when establishing the competent authority team.

Law stated - 23 June 2023

Advantages and disadvantages

What are the key advantages and disadvantages to obtaining an APA with the tax authority?

The advantages and disadvantages in Ireland are similar to those in most countries.

Advantages include:

- certainty and enhanced predictability;
- reduced scrutiny going forward;
- avoiding costly and time-consuming litigation or examinations;
- a better understanding of the business on the part of the Revenue Commissioners; and
- the opportunity to establish or improve a relationship with the Revenue Commissioners in a non-adversarial environment.

Disadvantages include:

- external professional fees;
- close scrutiny of a transaction by the Revenue Commissioners;
- significant time of key executives;
- no guarantee that the tax authorities will agree terms that are acceptable to the taxpayer;

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- a large amount of information must be volunteered to the Revenue Commissioners; and
- information submitted may be exchanged with tax authorities outside the APA procedure.

Law stated - 23 June 2023

SPECIAL TOPICS

Recharacterisation

Is the tax authority generally required to respect the form of related-party transactions as actually structured? In what circumstances can the tax authority disregard or recharacterise related-party transactions?

The Irish transfer pricing legislation now explicitly requires that the arm's-length amount shall be determined by identifying the actual commercial or financial relations between the supplier and the acquirer, as well as the economically relevant circumstances. In this regard, it may be appropriate to consider disregarding the legal form of a structure where:

- the economic substance of a transaction differs from its form; or
- the form and substance differ from those that would have been adopted by independent enterprises behaving in a commercially rational manner.

In such circumstances, the arrangement can be recast as an alternative arrangement that achieves a commercially rational expected result.

In addition, under the Irish general anti-avoidance rule, the Revenue Commissioners are generally entitled to consider the substance rather than the form of a transaction, or may disallow certain specific tax reliefs where the transaction is not carried out for bona fide commercial reasons or can be considered a tax avoidance transaction within the meaning of the Irish general anti-avoidance legislation.

The Supreme Court decision of O'Flynn Construction Limited v Revenue Commissioners [2011] IESC 47 is considered as support for a substance-over-form doctrine in Irish tax law and reverses the long-standing position of form over substance as enunciated in the UK case of IRC v Duke of Westminster 19 TC 490 and endorsed by the Irish courts in McGrath v McDermott III ITR 683.

Law stated - 23 June 2023

Selecting comparables

What are some of the important factors that the tax authority takes into account in selecting and evaluating comparables? In particular, does the tax authority require the use of country-specific comparable companies, or are comparables from several jurisdictions acceptable?

The Revenue Commissioners have not published guidelines on the evaluation of comparables, and there is no requirement to limit comparability analysis to Irish or European comparables. However, the principles outlined in Chapters I and III of the OECD Transfer Pricing Guidelines clearly will be relevant. The Revenue Commissioners typically adopt a pragmatic approach in evaluating comparables. In general, Irish tax legislation and the Revenue Commissioners place considerable weight on the commerciality of transactions. Therefore, in determining the appropriateness of the comparables identified, results that do not apparently make commercial sense (eg, when there is a substantial deviation from other results) should be investigated further.

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Law stated - 23 June 2023

Secret comparables

What is the tax authority's position and practice with respect to secret comparables? If secret comparables are ever used, what procedures are in place to allow a taxpayer to defend its own transfer pricing position against the tax authority's position based on secret comparables?

The Revenue Commissioners do not use secret comparables, but will use the same commercial databases typically used by taxpayers.

Law stated - 23 June 2023

Secondary adjustments

Are secondary transfer pricing adjustments required? What form do they take and what are their tax consequences? Are procedures available to obtain relief from the adverse tax consequences of certain secondary adjustments?

Generally, secondary transfer pricing adjustments are not a feature of the Irish tax landscape.

Law stated - 23 June 2023

Non-deductible intercompany payments

Are any categories of intercompany payments non-deductible?

There are no specific categories of intercompany payment that are non-deductible. However, there are limitations on the deductibility of certain interest payments to related parties where the related securities are:

- securities issued otherwise than for new consideration or are convertible, directly or indirectly, into shares;
- securities where the interest paid is to any extent dependent on the company's results or is at more than a reasonable commercial rate; or
- securities issued by an Irish company and held by a non-resident related company (other than a related company in an EU member state or a double tax agreement (DTA) partner country, or by certain Irish-resident finance companies where the interest represents a reasonable commercial rate).

Otherwise, intercompany payments are subject to the same rules on deductibility as third-party payments. For a trading expense to be deductible, it must be incurred wholly and exclusively for the purposes of the trade and must not be capital in nature. It is typically considered by the Revenue Commissioners that an excessive (or non-arm's-length) expense payment is not wholly and exclusively incurred for the purpose of a trade.

Finance Act 2021 implemented, for the first time in Ireland, the interest limitation rule under the Anti-Tax Avoidance Directive, and it is now effective for accounting periods commencing on or after 1 January 2022. The rules limit the net interest deductions of a company within the charge to Irish corporation tax to 30 per cent of earnings before interest, taxes, depreciation, and amortisation in a given period in certain circumstances.

Law stated - 23 June 2023

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Anti-avoidance

What legislative and regulatory initiatives (besides transfer pricing rules) have the government taken to combat tax avoidance with respect to related-party transactions? What are the penalties or other consequences for non-compliance with these anti-avoidance provisions?

An exit tax was introduced with effect from 10 October 2018. The tax was introduced as part of Ireland's implementation of the EU Anti-Tax Avoidance Directive (ATAD).

Another legislative initiative that has been introduced to combat tax avoidance is the controlled foreign company (CFC) rules. Like the exit tax, the CFC rules have also been introduced as part of Ireland's implementation of ATAD. In very general terms, a CFC charge may arise under the legislation in respect of a CFC if and to the extent that the CFC relies on activities carried on in Ireland to generate its profits. However, if those activities are remunerated on arm's-length terms, no CFC charge should apply. The CFC charge is applied at the Irish corporation tax rates (12.5 per cent to the extent that the profits of the CFC are generated by trading activities and 25 per cent in all other cases). The CFC charge will be reduced and credit will be given for foreign tax paid by the CFC on its income and other CFC charges imposed by other countries by reference to the profits of the CFC. In February 2022, the Revenue Commissioners published updated guidelines on the application of the CFC rules.

The standard tax interest and penalty provisions apply in respect of a failure to pay tax arising by virtue of the exit tax or CFC charge.

Implementing measures are not anticipated to give effect to the ATAD general anti-abuse rule (GAAR) in Ireland on the basis that Ireland's domestic tax code contains an ATAD-compliant GAAR.

ATAD-compliant anti-hybrid rules were introduced in the Finance Act 2019 and refined in Finance Act 2020 and Finance Act 2021. The reverse hybrid rule applies to entities that are treated as tax transparent in Ireland. The rule applies to tax periods commencing on or after 1 January 2022.

Law stated - 23 June 2023

Location savings

How are location savings and other location-specific attributes treated under the applicable transfer pricing rules? How are they treated by the tax authority in practice?

There are no specific rules on location savings, and, typically, the Revenue Commissioners will not assert location-specific attributes in applying the transfer pricing rules.

Law stated - 23 June 2023

Branches and permanent establishments

How are profits attributed to a branch or permanent establishment (PE)? Does the tax authority treat the branch or PE as a functionally separate enterprise and apply arm's-length principles? If not, what other approach is applied?

A non-Irish-resident company that is trading in Ireland through a branch or agency is subject to tax in Ireland on any trading income arising directly or indirectly through or from the branch or agency or any income from property or rights used by, held by or for the branch or agency.

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Following a public consultation on the introduction of the Authorised OECD Approach to the attribution of profits to branches of non-resident companies, Finance Act 2021 introduced the application of the OECD development mechanisms (the Authorised OECD Approach) into Irish transfer pricing legislation. This approach applies to the attribution of income to a permanent establishment of a non-resident company operating in Ireland for accounting periods commencing on or after 1 January 2022.

Prior to the Finance Act 2021, the general rule was that, once a trade was carried on in Ireland through a branch or agency, all the profits arising from the contracts or services were taxable.

For accounting periods commencing on or after 1 January 2022, income attributable to a permanent establishment of a non-resident company operating in Ireland is to be computed as the amount of income that the permanent establishment would have earned if it were a separate and independent company engaged in the same or similar activities and under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the notionally separate company and the other parts of the non-resident company. In giving effect to the notionally separate company approach the new rules are to be construed in so far as possible consistent with article 7(2) of the OECD Model and the guidance contained in the OECD Attribution of Profits to Permanent Establishments Report.

Law stated - 23 June 2023

Exit charges

Are any exit charges imposed on restructurings? How are they determined?

As part of Ireland's implementation of ATAD, an exit tax was introduced with effect from 10 October 2018. The exit tax arises when:

- a company migrates its place of residence from Ireland to any other jurisdiction;
- assets of an Irish PE are allocated from the PE back to head office or to a PE in another jurisdiction. This provision only applies in respect of companies that are resident in an EU member state other than Ireland; or
- the business of an Irish PE is allocated from the PE back to head office or to a PE in another jurisdiction. This provision only applies in respect of companies that are resident in an EU member state other than Ireland.

The exit tax is charged at 12.5 per cent and applies to a latent gain inherent in the relevant assets. The latent gain is calculated by deducting the market value of the relevant assets at the date of the migration (or allocation) from the price paid on acquisition (or base cost). The exit charge does not apply to assets that remain within the Irish tax charge (for example, Irish real estate or assets that continue to be used in the business of an Irish branch). The exit charge may be deferred and paid over five years. If the exit charge is unpaid, the Revenue Commissioners may pursue any other Irish resident group company or a director who has a controlling interest in the company that is subject to the charge.

Law stated - 23 June 2023

Temporary exemptions and reductions

Are temporary special tax exemptions or rate reductions provided through government bodies such as local industrial development boards?

No.

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UPDATE AND TRENDS

Tax authority focus and BEPS

What are the current issues of note and trends relating to transfer pricing in your country? Are there particular areas on which the taxing authority is focused? Have there been any notable legislative, administrative, enforcement or judicial developments? In particular, how is the OECD's project on base erosion and profit shifting affecting both policymakers and tax administrators?

Overview of Recent Updates

Ireland transfer pricing rules were significantly altered by the Finance Act 2019 with further changes also introduced by Finance Acts 2020, 2021 and 2022. The key developments are summarised below.

Some important changes implemented pursuant to the Finance Act 2019 include:

- extension of the rules to capture non-trading transactions (save for certain Irish-to-Irish transactions) and certain capital transactions (where the market value exceeds €25 million);
- removal of grandfathering provisions relating to transactions that occurred prior to 1 July 2010; and
- the introduction of formalised documentation requirements for taxpayers in line with the requirements of the OECD Transfer Pricing Guidelines (eg, a master file and local file).

The rules apply to all transactions unless the transaction falls within the scope of the Irish-to-Irish transaction exemption. This exemption was introduced in Finance Act 2019, however, the exemption introduced gave rise to interpretative difficulties regarding its application. A number of amendments to the Irish-to-Irish exemption were included in Finance Act 2020; however, as these too gave rise to interpretative difficulties, they ultimately were never implemented. Finance Act 2021 addressed the interpretative difficulties for chargeable periods commencing on or after 1 January 2022.

The treatment of Irish-to-Irish transactions has a separate rule as a result of Ireland's dual-rate system. Ireland operates two corporation tax rates: a 12.5 per cent rate applies to trading transactions and a 25 per cent rate applies to non-trading transactions. Interest on an intercompany balance could be taxable at 25 per cent as non-trading income in one group company and deductible at 12.5 per cent (or not at all) in another group company. Accordingly, the rule for Irish-to-Irish transactions ensures that the rules do not give rise to negative tax arbitrage within the Irish tax system.

In order for the Irish-to-Irish exemption to be satisfied:

1. each party's Irish tax computation must take account of any consideration payable or receivable;
2. where there is no consideration, each party's Irish tax computation would take account of the consideration if any were charged;
3. the supplier to the transaction (eg, a lender under a loan agreement) must not have entered into the transaction in the course of a trade; and
4. neither party to the transaction can be a section 110 company (ie, a securitisation company qualifying for treatment under section 110 of Ireland's tax code).

Where an acquirer to a transaction (eg, a borrower under a loan agreement) cannot satisfy the hypothetical test in condition (2), above, there is an further carve-out which examines the activities of the acquirer in the course of entering

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into the transaction. The carve-out looks at whether such activities give rise to, or are capable of giving rise to, taxable profits, gains or losses (including tax-exempt dividends) for the acquirer, directly or indirectly. It is not a blanket exemption on all transactions and must be considered on a case-by-case basis.

Updated guidance was introduced by the Revenue Commissioners to provide further clarity on the relevant provisions. Helpfully, the guidance confirms that for chargeable periods which commenced on or after 1 January 2020 and before 1 January 2022, the Revenue Commissioners will accept returns that are filed in accordance with the Irish-to-Irish exemption in accordance with the Finance Act 2021. The clarified exemption is a welcome development on the initial iteration of the exemption and should provide greater certainty to taxpayers going forward.

Tax audits

In addition to the appetite for proactive implementation at the tax policy level, the Revenue Commissioners have adopted a more aggressive stance with regard to transfer pricing compliance interventions. In particular, in recent years the commencement of transfer pricing audits has become more commonplace.

The Revenue Commissioners' annual report contains aggregated statistical information on the number of transfer pricing audits conducted and the outcomes. The Revenue Commissioners noted in their most recently available annual report that 51 transfer pricing compliance interventions have been initiated in the period from 2015 to the end of 2022. At the time of writing, there are transfer pricing assessments under appeal at the Irish Tax Appeals Commission (TAC), with the likelihood of more appeals to be brought before the TAC in the future.

Judicial developments

No transfer pricing-specific dispute has been determined by the TAC or the Irish courts as yet, and therefore there is no developed domestic judicial precedent system on transfer pricing.

BEPS and OECD Initiatives

Ireland supports the OECD's Pillar One and Pillar Two proposals and continues to be an active participant in tax reform discussions. As with most jurisdictions, the OECD's Pillar One and Pillar Two proposals will significantly impact the Irish tax and transfer pricing landscape. In March 2023, Ireland launched a feedback statement on the transposition of the EU Minimum Tax Directive. The feedback statement builds on the initial public consultation held by Ireland in 2021 on the OECD proposals and put forward initial draft legislation. A further consultation is expected in 2023 and the Irish Department of Finance has confirmed its plan to deliver the legislation as part of the Finance Bill 2023.

As there remains uncertainty around the legal and technical implementation of both Pillar One and Pillar Two, the interaction with Irish transfer pricing legislation remains to be seen. Taxpayers in Ireland are continuing to closely follow updates on the implementation of the proposals and are carrying out modelling to understand the potential impact on their transfer pricing policies.

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Jurisdictions

Jurisdiction	Firm
Canada	McCarthy Tétrault LLP
Cyprus	Kinanis LLC
Ireland	Matheson LLP
Italy	Chiomenti Studio Legale
Japan	TMI Associates
Luxembourg	Maples Group
Netherlands	Taxand
South Korea	Lee & Ko
Switzerland	Bär & Karrer
Taiwan	Lee and Li Attorneys at Law
United Kingdom	Joseph Hage Aaronson LLP
USA	Steptoe & Johnson LLP
Zambia	Mulenga Mundashi Legal Practitioners

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