



Transfer Pricing
Country Summary

Ireland

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1. Introduction

Ireland's Transfer Pricing legislation is incorporated in the Taxes Consolidation Act of 1997 (TCA). The rules are based on the arm's length principle, according to article 9 of the OECD MTC. Section 35A lays down all the TP rules. It is necessary to mention that the TP legislation in Ireland was updated with the introduction of the 2019 Finance Act 2019. The Finance Act substituted section 35A TCA and is applicable the fiscal year on or after 1/1/2020. These rules expanded the Transfer Pricing documentation and arm's length requirements to all trading and non-trading transactions, capital transactions between associated entities where the market value of the asset is in excess of €25 million; and previously 'grandfathered arrangements'. TP rules do not apply to SMEs in Ireland, because, even though there is a framework for such rules they are subject to a ministerial commencement order. Generally, TP rules are applicable to the taxpayers who are liable to pay tax in Ireland, which includes Irish branches of global companies.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

The OECD guidelines have been laid down in the Irish domestic legislation. Subsequently, they are used to give an interpretation of the arm's length principle.

b) Definition of Related Party

Related Party is defined as:

- One of the persons is participating in the management, control or capital of the other, or the same person is participating in the management, control or capital of each of the 2 persons; and one person is participating in the management, control or capital of another person at any time only if that other person is at that time (i) a company, and (ii) controlled by the first person;
- A company shall be treated as controlled by an individual if it is controlled by the individual and persons connected with the individual;
- A person is connected with an individual if that person is a spouse, ancestor, lineal descendant or sibling of the individual.

c) Nature of Transfer Pricing Documentation

As previously mentioned, Ireland did not have extensive TP legislation prior to the introduction of the 2010 Finance Act. In 2019 these rules were significantly updated, to cover non-trading transactions as well and capital transactions, which exceed a market value of more than 25M. Moreover, the TP rules introduced formal documentation requirements for taxpayers that are in line with the OECD TP Guidelines.

d) Tax Havens & Blacklists

Ireland has been labelled as a corporate tax haven in multiple reports. The state itself has denied the allegations multiple times and it is not listed as a 'tax haven' in any official reports. The CIT rate in Ireland is 12.5%. Irish legislation favors the establishment and operations of corporations because its economic environment is highly receptive. Ireland does not fall under the EU list of non-cooperative tax jurisdictions and it shall be noted that Ireland has taken effective steps to positively change its tax legislation and policies. Therefore, Ireland has managed to establish an environment that encourages innovation, while avoiding being labelled as a tax haven.

¹ <https://www.matheson.com/insights/detail/irelands-new-transfer-pricing-rules-practical-considerations-for-fy2020-tp-compliance-obligations>

e) Advance Pricing Agreement (APA)

Bilateral and multilateral (as a series of linked bilateral) APAs are available. There is no legislation that specifically empowers the Irish Revenue to formally conclude 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. No filing fee is charged on APA application. Following Action 14 of the OECD's Base Erosion and Profit Shifting (BEPS) Project, Ireland began a formal bilateral APA program from 1 July 2016. As part of the material published concurrently the commencement of this program, the Irish Revenue confirmed that they will not enter into unilateral APAs.

f) Audit Practice

The Irish Tax Authorities may request a taxpayer to provide his TP documentation. Documentation is to be prepared on a timely manner. The Audit Practice in Ireland is called Transfer Pricing Compliance review and the submission timeline is three months. The Tax Authorities may also propose an adjustment in case a dispute arises. Subsequently, the standard tax appeal procedures come into effect. Irish Legislation stipulates that ITA may carry out an inspection of tax returns filed under self-assessment. They do not have to give a reason as to why a particular company or tax return has been chosen for an inspection. The Audit procedure is performed based on the Code of Practice of Tax Audits, which is a piece of legislation that specifies the procedure that must be followed with respect to their conduct in an audit, as well and the settlement options that can be available to a taxpayer. Generally, the audit commences with an initial meeting between the taxpayer and the ITA that perform the audit. At this stage, the taxpayer has the right to disclose -verbally or written- certain comments, in relation to the returns under review. The auditors may request additional information about such disclosures, which will then be discussed in the initial meeting.² The purpose of the initial meeting is to check the accuracy of the disclosed documents. Then, the auditor will officially start the inspection of the books, balance sheets and records that support the tax return being audited. It is necessary to note that the

3. Transfer Pricing Documentation

a) Level of Documentation

The level of TP Documentation in Ireland is threefold. After the implementation of the new rules, a de minimis threshold was introduced to ascertain the proportionality of TP Documentation. The thresholds are currently based on the consolidated annual turnover of the whole group.

Master File:

When an Irish taxpayer is a member of a transnational group of companies, and the MNE group's reported total worldwide revenue is at or above the €250 million level, a master file must be produced. The master File must articulate all the business operation as well and the policies of the group as a whole. In principle, the organizational structure of the group must be explained in detail, along with an overview of the group's operations around the globe. Furthermore, the activities of the MNE's business must be stipulated. Some other important documents that shall be included are the MNE's intercompany financial activities, the MNE's intangible assets and its financial and tax positions.

Local File:

When an Irish Taxpayer is member of an MNE and the MNE's group reported worldwide revenue is at or above €50 million, they need to file a local file. The local file must include detailed information on an entity level and it must be specific to the Irish operations. In the file, all the related -party transactions are to be included, with

² <https://www.pwc.com/gx/en/international-transfer-pricing/assets/ireland.pdf>

associated persons in different countries, the amounts of those transactions and the company's tp analysis on the transfer pricing documentations.

CbCr:

When the annual consolidated group revenue is more than EUR 750 million, the Irish headquartered multinational companies are required to submit CbCr report. The content is the same with OECD Guidelines.

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

e) Choice of Transfer Pricing Method

The Irish TP rules do not specify which is the preferred TP methods. Nonetheless, it is required that the TP rules are stipulated in a way that they are consistent with the OECD TP Guidelines. Accordingly, the taxpayer must select the method that is the most appropriate in a specific transaction. The Comparable Uncontrolled Price (CUP), the Cost-plus Method, the Resale Price Method, the Transactional Net Margin Method (TNMM), the Profit Split Method (PSM).

f) Economic Analysis – Benchmark Study

The Irish Tax Authorities require that a benchmark study shall be conducted every three years. The financials of the group are to be updated on an annual basis. If the benchmark study remains contemporary it can be used for multiple years, as long as the economic circumstances are not materially different and the particular facts remain relevant.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the "conduct of parties" the prevailing concept.

h) Financial Statements

It is obligatory for taxpayers to disclose financial statements in their TP Documentation. In particular, Irish companies that are part of an MNE group must include qualitative and financial information in the local file or in the country file. When financial statements are not consolidated in a country file, companies will be deemed to be non-compliant with their TP documentation obligations.

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)*(If "No", it can be filed in English)
Corporate Income Tax	File	Local Form	September, 30 th .	No	No	No
Master File	Prepare	OECD Guidelines	September, 30 th .	No	Yes	No
Local File	Prepare	OECD Guidelines	September, 30 th .	No	Yes	No
CbCR	File	OECD Guidelines	December, 31 st .	Yes	Yes	No
Local Form	N/A	N/A	N/A	N/A	N/A	N/A
Annual Accounts	N/A	N/A	N/A	N/A	N/A	N/A
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A
* Ireland has signed the MCAA agreement for the filing of CBCR.						
* Ireland does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises.						

j) Mandatory Language

The language is not specified, but it is expected to be prepared in English.

k) Notification Requirement

Only CbCr has notification requirement: all MNE with annual consolidated group revenue of EUR 750 million or more have notification obligations, even if the headquarter is not in Ireland.

l) Record Keeping

The relevant documentation should be maintained for six years from the end of the transaction or six years from the end of the financial year in which the tax return is filed if the tax return is filed late.

m) Penalties and Interest Charges

There are two main types of penalty applicable, for failure to comply with TP rules in Ireland. First, there is a tax geared penalty in the case of Revenue Audit. Secondly, there is a fixed penalty in case a taxpayer fails to comply with TP bookkeeping and documentation requirements. In case the TP documentation is not presented in due time, a penalty of 4,000 EU is imposed. When the taxpayer has not fulfilled the local file obligations, such a penalty is increased to 25, 000 EU, and it increases 100EU each day the failure continues.